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CAUSE NOS. 6,986, 7,127 & 7,130

THE STATE OF TEXAS

VS.

BILLY JOE WARDLOW

§ IN THE DISTRICT COURT OF
§
§ MORRIS COUNTY, TEXAS
§
§ 76TH JUDICIAL DISTRICT
§
§ AUGUST TERM, A.D. 1994

DEFENDANT'S MOTION FOR CHANGE OF VENUE

August 12, 1994

VOLUME 5 of 43 volumes

FILED IN
COURT OF CRIMINAL APPEALS

OCT 11 1995

Troy C. Bennett, Jr., Clerk

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VS. § MORRIS COUNTY, TEXAS
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 § 76TH JUDICIAL DISTRICT
 §
BILLY JOE WARDLOW § AUGUST TERM, A.D. 1994

DEFENDANT'S MOTION FOR CHANGE OF VENUE

August 12, 1994

VOLUME 5 of 43 volumes

Before Honorable Paul Banner

Judge by Judicial Assignment

APPEARANCES

ATTORNEYS FOR THE STATE OF TEXAS:

MR. RICHARD TOWNSEND
District Attorney
Morris County Courthouse
Daingerfield, Texas 75638

ATTORNEYS FOR THE DEFENDANT:

MR. BIRD OLD, III
Law Offices of Bird Old, III
P.O. Box 448
Mt. Pleasant, Texas 75456-0448

1 On the 12th day of August, A.D. 1994,
2 at the August Term, A.D. 1994, the above-entitled and
3 numbered causes came on for hearing before said Honorable
4 Court, Judge Paul Banner, Judge by Judicial Assignment
5 presiding, and the following proceedings were had:

6
7 MR. OLD: Judge, before we get
8 started can I get the Sheriff to bring me my client?

9 THE COURT: Okay. This case
10 originally is "6,986", apparently re-indicted to 7,127
11 and now this the presenting indictment as 7,130.

12 MR. TOWNSEND: Your Honor --

13 THE COURT: Capital murder.

14 MR. TOWNSEND: -- Your Honor,
15 I would ask that we, for the purpose of this hearing file
16 to be carried forward from each case as far as the
17 motion.

18 THE COURT: Mr. Old, have you
19 been in it all along?

20 MR. OLD: No, sir. I have
21 not.

22 THE COURT: Is there any
23 reason that any motions or that might have been dealt
24 with earlier, why they shouldn't be made part of the
25 record of this without doing everything all over again?

1 MR. OLD: No, Your Honor.

2 THE COURT: Fine.

3 MR. TOWNSEND: Thank you, Your
4 Honor.

5 MR. OLD: Your Honor, may I
6 call the Court's attention to a problem we may have?

7 THE COURT: Yes, sir.

8 MR. OLD: I was told when I
9 got to the courthouse this morning that your assignment
10 to the case read "Marion county."

11 THE COURT: Actually there's
12 two assignments, one has been corrected, there is a
13 subsequent one that corrected it to indicate it.

14 MR. OLD: I have not seen the
15 corrected.

16 THE COURT: Morris county, I
17 didn't bring them but I have seen the one that says
18 "Morris county" on it.

19 MR. OLD: That's my objection.

20 THE COURT: It was about four
21 days later.

22 That's the Defendant's Motion for
23 Abatement?

24 MR. OLD: Yes, Your Honor.

25 Not on the assignment, Your Honor, no,

1 sir. On a different matter.

2 THE COURT: Okay. What you
3 are asking on an abatement is that this hearing not be
4 done today?

5 MR. OLD: That's correct, Your
6 Honor.

7 THE COURT: On the ground that
8 there might be something that I would hear on the
9 assumption another judge is assigned to actually preside
10 he wouldn't know what is heard?

11 MR. OLD: That's correct.

12 THE COURT: Does that mean the
13 Defense concedes that the motion is not going to be
14 granted to transfer?

15 MR. OLD: No, sir. It does
16 not. I would just like to have a judge at a later date
17 if my motion is denied either carry the motion or reopen
18 the motion without having to have the benefit of this
19 evidence.

20 THE COURT: Mr. Townsend, have
21 you got a position on his abatement?

22 MR. TOWNSEND: Your Honor, I
23 was served, was given a copy of this by Mr. Old about an
24 hour and a half or two hours ago. I have not had an
25 opportunity to research the law on it. However, it would

1 seem to us that we have been waiting long enough for this
2 Motion for Change of Venue. From a practical standpoint
3 we would like to go ahead and hear the motion.

4 THE COURT: Well, okay. The
5 Motion to Abate is overruled.

6 Mr. Old, I believe we have discussed on
7 -- by telephone a week or so ago or maybe earlier this
8 week is that the best I could tell there's not anything
9 that if the case stayed here -- in other words, if it's
10 not transferred and if there are problems in jury
11 selection because of having a tainted pool or difficult
12 pool from which to get a jury I don't know of any reason
13 a judge couldn't do it and my guess is that -- I am hard
14 pressed to figure out some way or another that the
15 Defendant would be disadvantaged by proceeding on.

16 Obviously the Defendant is in custody.

17 MR. OLD: The disadvantage
18 that I see, Your Honor, a judge at a later date is not
19 going to have the benefit of having heard this evidence
20 that is going to be presented today. I don't believe
21 that it would be proper to be offered to him the
22 Statement of Facts. In such things you have got to show
23 the unavailability of a witness to use such a thing, you
24 have got to show the unavailability of a witness in a
25 criminal case at least I believe that would be the law

1 and I think that even if he viewed it by Statement of
2 Facts he is deprived of the subjective judgment of the
3 witness seated, their demeanor, the way they testify.
4 It has an effect on credibility.

5 MR. TOWNSEND: Your Honor, may
6 I speak to that briefly?

7 THE COURT: Yes.

8 MR. TOWNSEND: I think any
9 judge sitting during the jury selection that decided that
10 a fair panel could not be selected that decision is going
11 to be based on what he sees with that jury panel anyway,
12 he's not going to make his decision based on something
13 that another judge has already made a decision on.

14 THE COURT: You folks are
15 welcome to have a seat unless you just like to stand.

16 MR. TOWNSEND: And I believe
17 that --

18 THE COURT: I mean I had all
19 you guys up there standing, too. I just thought you all
20 didn't have anything you were doing just wanted to stand.
21 I apologize.

22 MR. TOWNSEND: My position is
23 that having a hearing today but later on that would have
24 to be determined by the judge at that time, it would not
25 be based on this earlier testimony after he saw the

1 panel.

2 Your Honor, I would like to add this,
3 I know you have a lot more experience in these matters
4 than I do and I have not had an opportunity to research
5 that, this is a capital murder case and I certainly don't
6 want to do anything to cause a problem in the future but
7 I don't believe it would.

8 THE COURT: I fail to see that
9 there is anything that would prejudice Mr. Wardlow,
10 additionally there are two trips, two ways to get a case
11 transferred other than by agreement, one is that if a
12 hearing such as the one scheduled today, it would be that
13 the Defendant would not be accorded a fair trial because
14 of whatever the general population in which the jury to
15 be selected was prejudice, the other way is if in fact
16 in trying to select a jury that it become obvious that
17 a panel could not be, you know, jurors could not be
18 selected.

19 I just don't -- and one isn't going to
20 have a lot to do with the other as I see it.

21 Gentlemen, I think what I would like to
22 do, I'm going to have to take about a four or five minute
23 recess and we will be off the record. Let me talk to the
24 lawyers in chambers now.

1 (Recess.)

2
3 THE COURT: Okay. We will be
4 I guess on the record, 7,130 which is inclusive of the
5 two prior indictments.

6 Mr. Wardlow, I am Paul Banner and I am
7 a District Judge that sits over in Hunt county which is
8 in Greenville.

9 It is my understanding that because the
10 judge in the court in which this case is pending is not
11 going to hear it that the case will actually be presided
12 over by somebody assigned to it. The indictment is in
13 the 276th, is that Judge Porter's court?

14 THE DISTRICT CLERK: "76th"
15 or Judge Moye really is the last one that passed on it,
16 the "76th."

17 THE COURT: Okay. So both of
18 the sitting judges, elected judges for this district have
19 stepped aside?

20 THE DISTRICT CLERK: Yes, sir.

21 THE COURT: Anyway what I need
22 to do is it has been called to my attention and I
23 understand that your lawyer has probably already
24 discussed it with you and Mr. Old your counsel may or may
25 not have back about four generations upon both sides

1 somewhere in the past may or may not have been related
2 to the alleged deceased, that is to Mr. Cole.

3 I have discussed once it was called to
4 my attention that might or might not have been the case
5 as I discussed it with Mr. Old awhile ago and I'm given
6 to understand that you are aware that there might or
7 might not have been.

8 The problem that comes is that
9 apparently Mr. Old is trying to verify whether he is in
10 some way or another that there was by marriage some sort
11 of common ancestor back upstream. When Mr. Old tried to
12 check that out he does not get any confirmation of any
13 kind of family tree history he's got but I do understand
14 that might or might not be the case. There is no legal
15 problem that I'm aware of whether that were to be true
16 or not.

17 As far as you are concerned is there any
18 problem that you would have?

19 THE DEFENDANT: No, sir.

20 THE COURT: Okay. Fine.

21 Let's go on to what I am really here
22 about and that is the transfer hearing or Change of Venue
23 Hearing.

24 The burden is on the Defense so I guess,
25 Mr. Old, you can begin to call some witnesses or whatever

1 it is that you are going to present.

2 MR. TOWNSEND: Judge, may I
3 approach the bench?

4 THE COURT: Sure.

5
6 (Off the record discussion at the bench
7 out of the hearing of the Court Reporter.)
8

9 THE COURT: I asked the Clerk
10 too and I have read the motion to transfer it, okay. In
11 7,130 the State of Texas Vs. Billy Joe Wardlow, if you
12 would arraign the Defendant.

13 MR. TOWNSEND: "In the name
14 and by the authority of the State of Texas: The Grand
15 Jurors for the County of Morris, State of Texas, duly
16 selected, empaneled, sworn, charged and organized as such
17 at the February-March Term, A.D. 1994 of the 276th
18 Judicial District Court of said county, upon their oaths
19 present in and to said court that Billy Joe Wardlow on
20 the 14th day of June, A.D. 1993 and before the
21 presentment of this indictment, in said county and state
22 did then and there intentionally cause the death of an
23 individual, namely Carl Cole, by intentionally shooting
24 the said Carl Cole with a firearm, and the Defendant was
25 then and there in the course of committing and attempting

1 to commit the offense of robbery of Carl Cole, against
2 the peace and dignity of the state, signed Bobby Brown,
3 Foreman of the Grand Jury."

4 THE COURT: And the
5 indictment, does the Defendant have any suggestion that
6 his name is other than set out on the face of the
7 indictment?

8 THE DEFENDANT: Yes, sir.

9 THE COURT: How does the
10 Defendant choose to plead to the indictment?

11 THE DEFENDANT: Not guilty.

12 THE COURT: A plea of not
13 guilty is received from the Defendant to the indictment
14 so I guess we need to go on to our motion then.

15 MR. OLD: Are we to hear the
16 Change of Venue?

17 The Defendant is ready, Your Honor.

18 MR. TOWNSEND: The State is
19 ready, Your Honor.

20 THE COURT: Okay.

21 MR. OLD: Your Honor, at this
22 time the Defendant would have the Motion for Instructed
23 Verdict on the Motion for Change of Venue.

24 There are two grounds set forth by 31.03
25 which the Court can change venue on. As the Court well

1 knows that by raising those grounds and by obtaining
2 affidavits of two or three more persons the Defendant has
3 raised the issue. The State must controvert by
4 controverting affidavit the facts alleged in the
5 Defendant's motion in order for the issue to be joined
6 and thereby a trial. If the State does not join those
7 issues or does not file affidavits we are entitled to an
8 instructed verdict as a matter of law. If those
9 affidavits do not controvert our affidavit then we are
10 also entitled to an instructed verdict and it is our
11 position that the affidavits controverting the
12 Defendant's affidavit must go to both the 31.03 grounds
13 and that is there exists in the county where the
14 prosecution is commenced such a great prejudice against
15 him that he cannot obtain a fair and impartial trial.

16 And the second issue is that there is
17 a dangerous combination against a -- against him
18 instigated by influential persons.

19 The State has not in any way
20 controverted that there is a dangerous combination
21 against him instigated by influential persons, secondly;
22 the State's affidavit, what it attempts to raise is the
23 credibility of the Defendant affiant, it makes the
24 statement that Defendant affiants are prejudice to said
25 Defendant as to the credibility issue and that is not

1 supported by any facts and it is a nonsense meaningless
2 statement, the affiants' affidavits do not show a
3 prejudice as to the Defendant.

4 We have reduced our Motion for
5 Instructed Verdict to writing and request permission to
6 file the same with the Court.

7
8 (Handed to the Court.)

9
10 THE COURT: Would you put a
11 stamp on that?

12 MR. OLD: And we would call
13 the Court's attention to the case of --

14 THE COURT: Did the Defendant
15 file a controverting affidavit?

16 MR. TOWNSEND: Yes, Your
17 Honor.

18 THE COURT: It may be in one
19 of these others, in 7,130, I don't --

20 MR. TOWNSEND: It's "7,127."

21 THE COURT: What case were you
22 going to call my attention? That's where I interrupted
23 you.

24 MR. OLD: Excuse me.

25 THE COURT: The next thing you

1 may want to do if you have a photocopy of the case --

2 MR. OLD: It's "Turner Vs.
3 State, 641 383."

4 THE COURT: Do you have a copy
5 of that?

6 MR. OLD: Yes. I do. Excuse
7 me.

8 If you don't mind, I have marked all
9 over it and I have marked it so many times --

10 THE COURT: I'm going to read
11 what was printed.

12 The Motion for Judgment or Motion to
13 Grant Without the Change of Venue on the basis of it not
14 being contested, that motion is denied.

15
16 (Defendant's Exhibit 1 was marked for
17 identification.)

18
19 MR. OLD: I have I believe
20 nineteen witnesses in the hall, could we have them all
21 sworn in here?

22 THE COURT: If you can get
23 them in here we will swear them all.

24 Is that including any witness the State
25 may call?

1 Let's get everybody sworn all at one
2 time.

3 MR. OLD: May I call my roll
4 to be sure they are all here?

5 THE COURT: You may.

6 Mr. Old, if you will tell me that cite
7 again. I didn't write it down and I'm about to.

8 MR. OLD: "Turner Vs. State,
9 641 Second, 383."

10 THE COURT: And that was "El
11 Paso Appeal's Court?"

12 MR. OLD: Yes.

13 THE COURT: Okay. I know you
14 all have been very patiently waiting and I owe you an
15 apology, I was sitting in Emory and it turned out the
16 drive from Emory to your county seat takes a little
17 longer than if I had pushed the speed limit. I apologize
18 to you for the delay. We had some preliminary matters.

19 What is going to happen, Mr. Old wants
20 to call the roll of the witnesses that are subpoenaed and
21 the County Attorney is going to call roll and we want to
22 make sure who is here. If you are here to testify in
23 this matter the State of Texas Vs. Billy Joe Wardlow, if
24 you will kindly stand and raise your right hand. I need
25 to swear all of you as a witness here in the Wardlow

1 matter.

2
3 (Witnesses sworn.)
4

5 THE COURT: Okay. Now, before
6 you start sitting down let's go down the front row from
7 your right and I need or Mr. Old do you want to just call
8 your roll?

9 MR. OLD: Yes, Your Honor.

10 THE COURT: Okay. Once your
11 name is called then you can sit down but we are trying
12 to figure out who is here.

13 MR. OLD: "Mary Betts, Joel
14 Fomby, Cathy Byrd, Ron Cowan, Grover Dyas, Johnny Floyd,
15 Ron Goetz, Russell Guest."

16 A VOICE: Russell was out
17 there just a little while ago, he's here.

18 THE BAILIFF: You need Russell
19 Guest? Is that him, "Russell Guest?"

20 THE COURT: If you would, sir,
21 raise your right hand and let me get you sworn.
22

23 (Witness sworn.)
24

25 THE COURT: Fine. You can

1 have a seat.

2 Now, what we are doing, we are going
3 through calling the roll of who is here against the list
4 of who we expected to be here.

5 MR. OLD: "Fletcher Hartgrove,
6 Wanda Hartgrove, Robert W. Henderson, James Hill, Sue
7 Hill, Patsy Martin, William H. McCoy."

8 A VOICE: I am here, Bird.

9 MR. OLD: "W.S. Nash."

10 THE BAILIFF: He went to the
11 doctor, he's going to be late.

12 MR. OLD: "O.B. Senn."

13 A VOICE: Right here.

14 MR. OLD: "Welton Walker and
15 Mr. A.W. Lawton."

16 Your Honor, Mr. Nash has talked to the
17 Clerk this morning, he had a doctor's appointment and
18 indicated that he would be here about 3:00 or 3:30.

19 THE COURT: I think we have
20 got enough people.

21 WELTON WALKER, DISTRICT CLERK:
22 I didn't get sworn in, Your Honor.

23
24 (Whereupon Welton Walker, District Clerk
25 of Morris County was sworn as a witness.)

1 THE COURT: Have a seat.

2 MR. OLD: Your Honor, we are
3 ready to proceed.

4 THE COURT: Anybody you need
5 to check on?

6 MR. TOWNSEND: I have just one
7 and he's here.

8 THE COURT: Mr. Old, do you
9 want to call your first witness?

10 MR. OLD: Yes, Your Honor.

11 We would offer into evidence what has
12 been marked "Defendant's Exhibit 1, 8/12/94" by the Court
13 Reporter, Mr. Billups, it is more information as to
14 Morris county, Titus, Camp and Marion county. It was
15 provided by Mt. Pleasant Chamber of Commerce and Mr.
16 Townsend has agreed that it may be offered into evidence
17 without the witness here to authenticate the same.

18 MR. TOWNSEND: That is agreed,
19 Your Honor.

20 THE COURT: Okay. Exhibit 1
21 is received, received for the purpose of this hearing
22 which projects various demographical, statistical data
23 obviously obtained from the last federal census?

24 MR. OLD: Yes. And from some
25 other sources, there's a bibliography on the back where

1 all the information came from.

2 THE COURT: It's received
3 without objection.

4
5 (Defendant's Exhibit 1 was received in
6 evidence.)

7
8 MR. OLD: On the next to last
9 page, the Data Source.

10 MR. TOWNSEND: Your Honor, I
11 would ask that the Rule be invoked.

12 THE COURT: Okay. Let me
13 explain something to you folks that have been subpoenaed
14 and now sworn as a witness in this hearing, the Rule as
15 to witnesses has been invoked. What that means if you
16 have never hung around the courthouse before is that
17 while this hearing is being conducted unless you are the
18 witness testifying you will not be in the courtroom to
19 hear what other witnesses testify to.

20 There's some more explanation to this
21 origin of this Rule, it was found that upon the
22 desirability of witnesses giving what they presently
23 remember and recall about some prior event, not what some
24 other witness that has been sitting out in the hall for
25 the last hour on the bench would remember so you are

1 under an instruction that not only would you not be in
2 the courtroom to hear other witnesses' testimony, you may
3 not discuss with another witness what their testimony has
4 been and will be, you may not tell them what your
5 testimony has been or will be.

6 Now, probably a bunch of you are
7 acquainted with each other so you talk about anything
8 else in the world you want to.

9 Now, this issue in this proceeding has
10 to do with a pending charge against Mr. Billy Joe Wardlow
11 where he stands indicted with alleged to have caused the
12 death of a Mr. Cole, that's what it's about and the
13 question has to do with whether this is a proper county
14 for the case to be heard.

15 So, if you will just stay away from
16 discussing anything about Mr. Cole or about this case and
17 we will be in good shape.

18 The problem is that if you do violate
19 the instruction that I have given you then whatever you
20 know I will never learn because you are not going to be
21 able to tell me about it though you have already been and
22 spent several hours and when you could have been doing
23 something else you are already here and it would be a
24 shame whatever it is you came to tell us as far as your
25 recollection of the facts that I would never be able to

1 hear, okay?

2 What I'm trying to tell you is just
3 don't talk about Mr. Cole, Mr. Wardlow or what this case
4 is about. You can talk about whether we are going to get
5 baseball after today or not and so forth, talk about the
6 Court's starting late, whatever you want to talk about,
7 just do not talk about this specific case.

8 Now, what I'm going to do is excuse you
9 out here and have a seat out in the hall some place,
10 probably each witness will be relatively short so
11 consequently we will be moving once we finally get
12 started now, I think we will move pretty quickly but if
13 you would, if you will be available so when your name is
14 called we can get you in because there's a lot of folks
15 here and if we spent more time looking for you than it
16 does to find out what you know then of course that means
17 everybody that is going to be called behind you or after
18 you will just mean that they will be later this afternoon
19 than they would, otherwise would have.

20 So if you have been sworn as a witness
21 I'm going to excuse you out in the hall and we will get
22 to you just as quickly as we reasonably can.

23 If you are not a witness of course you
24 are welcome to stay and observe the proceeding.

25 Mr. Old, I'm going to exempt the Clerk

1 under the Rule save and except for that part, I'm not
2 going to exclude him from the courtroom, he's got an
3 official duty, needs to be stamping things and he can
4 stay in here.

5 If that causes a problem I will be happy
6 to --

7 MR. OLD: No problem.

8 Mr. McCoy also is an officer of the
9 Court.

10 THE COURT: As an officer of
11 the Court he is excluded from the Rule but he will be
12 bound by the instructions I gave him.

13 Call your first witness.

14 MR. OLD: I call Mr. Ron
15 Goetz.

16
17 RON GOETZ
18 was called as a witness and, having been first sworn by
19 the Court, testified as follows:

20
21 DIRECT EXAMINATION

22 BY MR. OLD

23
24 Q Would you please state your name?

25 A Ron Goetz.

1 Q How do you spell that last name?

2 A "G-O-E-T-Z."

3 Q It has an "O" in it?

4 A Right.

5 Q Where do you reside?

6 A In Daingerfield, Texas.

7 Q How long have you lived in Daingerfield or
8 Morris county, Texas?

9 A Six and a half years.

10 Q How are you employed?

11 A I am the Publisher of the Bee newspaper.

12 Q How long have you been a publisher of the Bee
13 newspaper?

14 A Six and a half years.

15 Q What area does the Bee cover?

16 A Mostly Morris county and into Hughes Springs.
17 Southern part of Morris county more than
18 the northern part.

19 Q What is the circulation in Morris county?

20 A In Morris county itself?

21 Q Right.

22 A About 2,500.

23 Q Does that include your rack sales?

24 A Yes, sir.

25 Q Either by subscription or by sale you all sell

1 approximately 2,500 papers?

2 A Both mail subscription and street sales about
3 2,500 within Morris county.

4 Q "Within Morris county?"

5 A Yes.

6 Q What is your total circulation?

7 A 3,200.

8 Q The additional 700, can you identify any part
9 of it, any particular locality?

10 A I have got about 300 in Hughes Springs, about
11 a hundred in Avinger, less than a hundred down in Marion
12 county by the north side of Lake O' the Pines and the
13 rest is scattered.

14 Q Part of the city of Hughes Springs is in Morris
15 county, is it not? The line is close to it?

16 A Well, the city limits is into Cass county but
17 their mailing address is in Hughes Springs and there is
18 a part in Morris county. Yes.

19 Q Has your newspaper -- are there any other
20 newspapers in the county?

21 A Yes, sir.

22 Q And what are they?

23 A The Naples Monitor.

24 Q And do you know what their circulation is?

25 A No. I don't. I understand it's around 2,000

1 but I couldn't say for sure.

2 Q How often does the Bee publish, once or twice?

3 A Once a week.

4 Q How often does the Monitor publish?

5 A Once a week.

6 Q You are familiar with the alleged situation
7 surrounding the death of Mr. Carl Cole?

8 A Yes, sir.

9 Q Has your paper reported that event?

10 A Yes. It has.

11 Q When did it first report it?

12 A On June 16th, 1993.

13 Q Would that have been the first newspaper
14 published after Mr. Cole's death?

15 A Yes. It was.

16 Q Did you receive a subpoena to bring all matters
17 as to Mr. Cole's death and as to Mr. Wardlow being
18 accused of having killed him into Court today?

19 A Yes. I did.

20 Q Have you done so?

21 A Yes. I have.

22 MR. OLD: May I approach the
23 witness, Your Honor?

24 THE COURT: Yes.

25 THE WITNESS: Do you want the

1 whole folder?

2 MR. OLD: No. Let's do them
3 one at a time.

4
5 (Defendant's Exhibit 2 was marked for
6 identification.)

7
8 MR. OLD: I show you what is
9 marked "Defendant's Exhibit 2" and ask you if this was
10 the report in the Bee of Mr. Cole's death?

11
12 (Handed to the witness.)

13
14 THE WITNESS: Yes. It was.
15 Yes. It was.

16 MR. OLD: We would offer
17 Defendant's Exhibit 2 into evidence.

18 MR. TOWNSEND: No objection,
19 no objection, Your Honor.

20 THE COURT: It's received.

21
22 (Defendant's Exhibit 2 was received in
23 evidence.)

24
25 MR. OLD: Approach the bench?

1 (Off the record discussion at the bench
2 out of the hearing of the Court Reporter.)
3

4 MR. OLD: Can you show me the
5 next publication?
6

7 THE WITNESS: June 23rd.
8

9 (Defendant's Exhibit 3 was marked for
10 identification.)
11

12 MR. TOWNSEND: No objection.
13

14 MR. OLD: Your Honor, we would
15 offer Defendant's Exhibit 3, the June 23rd publication
16 of the Bee and we would call the Court's attention to
17 there are three articles, two front page articles and
18 under "Obituaries", Mr. Cole's obituary.
19

20 (Defendant's Exhibit 3 was received in
21 evidence.)
22

23 THE WITNESS: Okay. This was
24 June the 30th.
25

(Defendant's Exhibit 4 was marked for
identification.)

1 MR. TOWNSEND: No objection.

2 MR. OLD: Your Honor, we would
3 offer Defendant's Exhibit 4 into evidence.

4 THE COURT: "4" is received.

5
6 (Defendant's Exhibit 4 was received in
7 evidence.)

8
9 THE WITNESS: The next article
10 is May 25th, 1994, I didn't have the full paper or page
11 to bring you.

12
13 (Defendant's Exhibit 5 was marked for
14 identification.)

15
16 MR. OLD: We would offer
17 Defendant's Exhibit 5.

18 MR. TOWNSEND: No objection.

19 THE COURT: "5" is received.

20
21 (Defendant's Exhibit 5 was received in
22 evidence.)

23
24 THE WITNESS: I'm sorry I
25 don't have a date on this paper, it was in May of this

1 year.

2 MR. OLD: I think this is the
3 one we just looked at.

4 THE WITNESS: It was? Was it
5 the one you just got? Is that the same?

6 Okay.

7 MR. OLD: See the headline on
8 it is the same. (Indicating)

9 THE WITNESS: Okay. I'm
10 sorry. There was one on June 30th, 1993 also.

11
12 (Defendant's Exhibit 6 was marked for
13 identification.)

14
15 MR. TOWNSEND: No objection,
16 Your Honor.

17 THE COURT: It's received.

18
19 (Defendant's Exhibit 6 was received in
20 evidence.)

21
22 THE WITNESS: The next one is
23 July 6th, 1994.

24
25 (Defendant's Exhibit 7 was marked for

1 identification.)

2

3

MR. TOWNSEND: No objection,

4

Your Honor.

5

THE COURT: "7" is received.

6

7

(Defendant's Exhibit 7 was received in

8

evidence.)

9

10

THE WITNESS: The next one is

11

July 27th, 1994.

12

13

(Defendant's Exhibit 8 was marked for

14

identification.)

15

16

MR. OLD: We offer Defendant's

17

Exhibit 8.

18

MR. TOWNSEND: No objection,

19

Your Honor.

20

THE COURT: "8" is received.

21

22

(Defendant's Exhibit 8 was received in

23

evidence.)

24

25

THE WITNESS: The next one is

1 August 3rd, 1994 and that's the last one.

2
3 (Defendant's Exhibit 9 was marked for
4 identification.)

5
6 MR. OLD: Offer Defendant's
7 Exhibit 9.

8 MR. TOWNSEND: No objection,
9 Your Honor.

10 THE COURT: Received.

11
12 (Defendant's Exhibit 9 was received in
13 evidence.)

14
15 MR. OLD: Your Honor, would
16 you like time to review?

17 THE COURT: No. Go ahead.

18 MR. OLD: Did you do any of
19 the reporting of the story yourself?

20 THE WITNESS: No, sir.

21 Q (BY MR. OLD) Was it done under your direction?

22 A Well, everything up there is done under my
23 direction indirectly.

24 Q Did you edit a copy that was submitted by your
25 reporter or writer?

1 A No. I read the story but I didn't edit it.

2 Q Did you have the opportunity to edit if you e
3 desire to?

4 A Yes, sir. I did.

5 Q Do you know Mr. Cole or know of Mr. Cole?

6 A The best of my knowledge I never met Mr. Cole.

7 Q Did you know him by reputation?

8 A Yes, sir. Vaguely, vaguely.

9 Q Did you read Mrs. Best's article of June 23rd
10 "Cole a friendly man with a friendly routine?"

11 A Yes, sir. I did.

12 Q Starts out that the "cold-blooded murder last
13 week of a local rancher", do you recall the story?

14 A I recall the story but I couldn't tell you
15 exactly how it started out. I recall the story.

16 Q Do you recall that statement?

17 A Not really.

18 Q I am being unfair with you, I have it here, I
19 didn't know whether you had read them well enough.

20

21 (Handed to the witness.)

22

23 THE WITNESS: Okay. This
24 story here? (Indicating)

25 I remember the statement.

1 MR. OLD: The article goes on
2 to point out that Mr. Cole was 82 years of age, he was
3 a pioneer of this county?

4 THE WITNESS: That's correct.

5 Q (BY MR. OLD) And that he was a person well-
6 known?

7 A That's correct.

8 Q All through the county?

9 A That's correct.

10 Q And that he was a man who people throughout
11 this county were fond of?

12 A Yes, sir.

13 Q Are you familiar with the other side, the other
14 article on the front page?

15 A Yes. I am.

16 Q And it purports to be an interview of an
17 officer I believe in Madison?

18 A South Dakota.

19 Q South Dakota who claimed they arrested Mr.
20 Wardlow?

21 A That's correct.

22 Q Who wrote that article?

23 A Charles Wright.

24 Q Is he still with the paper?

25 A Yes. He is.

1 Q Do you know whether or not that was by a phone
2 interview?

3 A I beg your pardon?

4 Q Do you recall whether or not that was a phone
5 interview?

6 A Yes. It was.

7 Q What was the headline?

8 A "Wardlow, Fulfer face death penalty, duo act
9 cool up north."

10 Q Do you know whether or not that --

11 MR. TOWNSEND: I want to
12 object to going into this, Your Honor. It's -- you have
13 already told us that you can read, I feel sure that you
14 can, I feel sure that you are going to and I don't see
15 any purpose for going over verbatim what is in those
16 articles.

17 MR. OLD: I'm well aware that
18 the Court can read, Your Honor.

19 THE COURT: Well, I want you
20 to put on pretty much what you want to but if the witness
21 is going to be reading selected passages of the document
22 that is otherwise going to be received --

23 MR. OLD: That really wasn't
24 my intent.

25 THE COURT: Go ahead. I'm

1 sorry for interrupting you.

2 MR. OLD: You were not a party
3 to the conversation that report was made from?

4 THE WITNESS: I beg your
5 pardon?

6 Q (BY MR. OLD) As to the article we were talking
7 about, you were not a party to the conversation between
8 Mr. Wright and the officer?

9 A No, sir.

10 Q Did you edit that particular article?

11 A No, sir.

12 Q But you had the opportunity to?

13 A Yes. Probably. I can't recall exactly what
14 I was doing at that time that the article was written but
15 I'm sure I had the opportunity to edit it.

16 That's what I pay an editor for is to
17 edit.

18 Q You have read that article, are you familiar
19 with it?

20 A Basically. I haven't reread the whole thing
21 in the last two days.

22 Q What it pretty well says is how the officer's
23 observation, his observation, his opinion of how Mr.
24 Wardlow acted?

25 A That's correct.

1 Q And that it is his from the subject?

2 A That's correct.

3 MR. OLD: Pass the witness.

4 THE COURT: Mr. Townsend.

5

6 CROSS EXAMINATION

7 BY MR. TOWNSEND

8

9 Q Mr. Goetz, I believe you stated that you have
10 approximately 2,500 circulation in Morris county, is that
11 correct?

12 A That's correct.

13 Q Do you have any record as to how many of those
14 subscriptions are in the Naples or Omaha area?

15 A I have records of it but I don't have them here
16 with me but I can tell you that we sell approximately a
17 hundred copies a week in the Naples-Omaha area off the
18 newsstand, "sell and get stolen" I should say and we
19 probably have about forty subscribers in Naples and maybe
20 thirty-five in Omaha. And I would have to get those
21 figures from the computer.

22 Q But it would be correct to say that basically
23 this --

24 A My basic circulation --

25 Q -- is a south end of the county paper?

1 A Lone Star, Hughes Springs, is the bulk of my
2 circulation.

3 MR. TOWNSEND: And basically
4 the Monitor is the north end of the county?

5 No further questions.

6
7 REDIRECT EXAMINATION

8 BY MR. OLD

9
10 Q Do you know whether or not television and radio
11 carried this particular story?

12 A I don't recall. I believe a Mt. Pleasant radio
13 station covered it, carried it. But I don't recall it
14 being on television, it might have been.

15 That has been fifteen months ago,
16 fourteen months ago.

17 MR. OLD: Pass the witness,
18 Your Honor.

19 MR. TOWNSEND: No further
20 questions.

21 THE COURT: May this gentleman
22 be excused?

23 MR. OLD: I have no objection.

24 MR. TOWNSEND: No objection,
25 Your Honor.

1 THE COURT: Thank you very
2 much. Thank you for being here.

3 The next witness, Mr. Old?

4 MR. OLD: Mr. Ron Cowan.

5 THE COURT: While we are
6 waiting for the witness to arrive, which date was the
7 last series of questions at the end of your direct, which
8 date was that?

9 MR. OLD: June 23rd, 1993.

10 THE COURT: All right. That
11 headline, "A friendly man, friendly routine"?

12 MR. OLD: Yes. And "duo act
13 cool up north, Wardlow, Fulfer face death penalty."

14 THE COURT: If you would just
15 have a seat over here, please, sir.

16
17 RONALD M. COWAN
18 was called as a witness and, having been first duly sworn
19 by the Court, testified as follows:

20
21 DIRECT EXAMINATION

22 BY MR. OLD

23
24 Q Please state your name.

25 A Ronald M. Cowan.

1 Q Where do you live, Mr. Cowan?

2 A I live at 116 Erin Circle, Daingerfield, Texas.

3 Q Morris county, Texas?

4 A Yes, sir.

5 Q How long have you been a resident of Morris

6 county, Texas?

7 A From 1951 to '62 and from 1977 to present.

8 Q Were you born and raised here in Morris county?

9 A I wasn't born here.

10 Q You were not?

11 A No.

12 Q How old were you when you came here?

13 A I was in the third grade when I came here.

14 Q You grew up here?

15 A Yes, sir.

16 Q And you came back here, you left for what

17 purpose?

18 A To go to school.

19 Q And you came, you worked and came back in what

20 year?

21 A 1977.

22 Q Since 1977 how have you been employed here in

23 Morris county?

24 A I have had my own business and I was County

25 Judge here for eight years.

1 Q And what was your business when you were in
2 business for yourself?

3 A I had a glass and mirror shop.

4 Q And you were elected County Judge in what year?

5 A I was elected in 1982.

6 Q And what year was the last year you served this
7 county?

8 A June, 1990.

9 Q And since June, 1990 how have you been employed
10 or occupied?

11 A I have been employed at Northeast Texas
12 Community College as a Sociology-English Instructor.

13 Q And you are a sociology and English instructor
14 at the college?

15 A Yes, sir.

16 Q Are you the head of either one of those
17 departments?

18 A I am the head of the Sociology Department.

19 Q What is "Sociology"?

20 A It's the study of how we become a human being,
21 how human interact in groups, social groups.

22 Q Did you know Mr. Carl Cole during his lifetime?

23 A Yes. I did.

24 Q Did you know him well?

25 A Yes. I did.

1 Q Do you know whether or not he was well-known
2 in all parts of Morris county, Texas?

3 A In my opinion he was.

4 Q And would you tell His Honor the facts that you
5 base that opinion on, your observations?

6 A For eight years I was County Judge, Carl Cole
7 helped my campaign when I was running, introduced me to
8 his brother in the north end, toured me around the
9 county, introduced me to a large number of people and
10 then over the years I watched him make his rounds. I
11 have been into the coffee shops in the north end of the
12 county and south end when he has come in and talked to
13 people.

14 Q And when you were running for judge he helped
15 you with your campaign?

16 A Yes, sir.

17 Q What was his brother's name?

18 A "Homer."

19 Q What did Homer do?

20 A He was a rancher, farmer.

21 Q Did he live in the north end of the county?

22 A Yes, sir.

23 Q At Omaha, Naples or near either one?

24 A Generally the Naples area, that area.

25 Q Was Homer a well-known man in this county?

1 A In my opinion he was.

2 Q Were he and Carl close based on your
3 observation?

4 A Fairly close.

5 Q Who else? Do you know any other member of Mr.
6 Cole's family?

7 A I knew Waldene Henderson.

8 Q Who is "Waldene Henderson?"

9 A His sister.

10 Q How did you come to know her?

11 A She taught in the public schools for years and
12 years and years.

13 Q Did she teach here?

14 A Yes.

15 Q Did she teach at the time that you were going
16 to school?

17 A She did. Yes.

18 Q Was she a well-known person in this county?

19 A Based on the number of students that she has
20 taught down through the years I would say she was a well-
21 known person, a lot of people would know her simply
22 because they have been in her classes.

23 Q Did you know Mr. Cole's son?

24 A Yes. I did.

25 Q And I don't recall, do you recall his first

1 name?

2 A His name is "Charles Cole."

3 Q Did Charles live in Morris county any period
4 that you are aware of?

5 A Yes, sir.

6 Q When was that?

7 A When I was growing up here he was the principal
8 of what is "West Elementary School" now, he ran for
9 County Judge at one time.

10 Q Do you know how many years he was principal?

11 A No. I don't.

12 Q Was it several?

13 A Several years.

14 Q Did he teach here before he became principal?

15 A I believe so.

16 Q Was he well-known and liked in this county?

17 A Yes. He was well-known and liked and well
18 respected.

19 Q Have you kept up with the media coverage of Mr.
20 Cole's death?

21 A By "keeping up" do you mean have I speed read
22 through the articles?

23 Yes. In the local papers. Yes.

24 Q Have you heard a lot of people comment on the
25 facts giving rise to his death and accusation made

1 against Mr. Wardlow?

2 A Initially when the even first occurred and when
3 all the initial publicity, yes, people were talking about
4 it all over the county widely.

5 Q Based upon their comments to you did you form
6 an opinion whether or not they had formed an opinion as
7 to Mr. Wardlow's guilt?

8 A Counselor, could you ask me that one more time?

9 Q Based upon your observation --

10 MR. TOWNSEND: I object to
11 that, he's calling for an opinion, legally calling for
12 an opinion on the part of the witness based not on his
13 personal knowledge but strictly his opinion, he can give
14 an opinion as to what he feels, I don't know that he can
15 give an opinion as to whether everybody else is talking
16 about it.

17 THE COURT: Overruled. You
18 can answer.

19 Actually he didn't finish the question
20 so you might have to start at the front.

21 MR. OLD: Based upon the
22 comments that you heard from other people about Mr.
23 Cole's death and the accusations against Mr. Wardlow did
24 you form an opinion as to whether or not they had formed
25 an opinion as to Mr. Wardlow's guilt?

1 THE WITNESS: Counselor,
2 that's an iffy question.

3 In some cases people were -- had strong
4 opinions and in some cases people expressed concern and
5 things like that without expressing a strong opinion on
6 one side or another. It was discussed but some people
7 had polarized. Yes.

8 Q (BY MR. OLD) Did they express the opinion to
9 you that they believed Mr. Wardlow to be guilty?

10 A I have had people express that opinion to me.
11 Yes.

12 Q Do you have an opinion as to whether or not Mr.
13 Wardlow can get a fair trial in Morris county, Texas?

14 A Yes. I do.

15 Q And what is that opinion?

16 A My opinion is that it would be difficult,
17 difficult to empanel a panel in Morris county that would
18 be fair and impartial and not know Carl Cole, the
19 Wardlows or any of the Cole's kinfolks.

20 Q And it is based upon the knowledge of people
21 of Mr. Cole?

22 A That and the size of the county, you know.

23 Q And the small jury pool?

24 A You know, relatively speaking we have a small
25 jury pool. Yes.

1 Q Was Mr. Cole kin to a lot of people in this
2 county?

3 A I'm not one of these people that keeps up with
4 everybody's genealogy. I know that he was kin to several
5 people and they in turn kin to others but to be able to
6 draw a family tree, Counselor, I couldn't draw you one.

7 Q Would you consider Mr. Cole to have been one
8 of the pioneer families -- the Cole family to be a
9 pioneer family in this area?

10 A I think that is generally accepted.

11 Q Do you know Jerry Pratt, Sr.?

12 A Yes. I do.

13 Q Was he County Judge before you?

14 A Yes. He was.

15 Q He has been quoted as having made the statement
16 that "Carl had an awful lot of friends?"

17 A I think that would be an understatement.

18 Q "An understatement?"

19 A Yes. I do.

20 Q In what way would that be an understatement?

21 A He had a lot of friends.

22 Q Carl was 82 years of age, did he get around
23 well?

24 A Yes. He did.

25 Q Was he still active in the cattle business at

1 the time of his death?

2 A I think he was cutting back, he had pretty
3 substantially cut back but he still kept his hands in it.

4 Q You mean he got out everyday and you saw him
5 about town?

6 A I saw him virtually everyday.

7 Q Where would you see him?

8 A I would see him at the little store in Cason,
9 I would stop and get a cup of coffee and we would visit.

10 Q Was he a friendly man who visited with a lot
11 of people?

12 A Everybody that came in.

13 Q I have also heard that he was a great story
14 teller?

15 A Yes.

16 Q Did Mr. Cole's popularity cross age groups,
17 that is was he known and liked by people much younger
18 than he?

19 A I think that may have had a limit. I think,
20 you know, I am considerably younger than Mr. Cole but a
21 lot of people in my age group who knew him and who liked
22 him and even the generation below me but as far as young
23 people, teenagers and people in their early 20s knowing
24 Mr. Cole I would say probably not.

25 Q How old are you, Mr. Cowan?

1 A I am 50.

2 Q Do you think it goes down a generation below
3 you?

4 A I would say the next group. Yes. People in
5 their 30s and 40s knew Mr. Cole.

6 MR. OLD: "People in their 30s
7 and 40s knew Mr. Cole?"

8 Pass the witness.

9
10 CROSS EXAMINATION

11 BY MR. TOWNSEND

12
13 Q Mr. Cowan, when you talked about Ms. Henderson
14 I believe you said she was a schoolteacher?

15 A I think so, Waldene.

16 Q Where did she teach if you know?

17 A I think she taught in Garland, she substituted
18 in the Daingerfield system for years and years and years.

19 Q She didn't work in the Naples-Omaha end of the
20 county?

21 A Counselor, I don't know for sure. She may have
22 when she first started.

23 Q As far as you know she didn't?

24 A As far as I know she did not.

25 Q Mr. Charles Cole is Mr. Cole's son was

1 principal and worked in the Daingerfield school district,
2 is that right?

3 A That's right. West Elementary.

4 Q He never worked in the Naples-Omaha end of the
5 county?

6 A Not to my knowledge.

7 Q On this popularity as regarding age would you
8 agree with me that Mr. Cole was certainly better known
9 in the 65 and older category than he would have been with
10 the younger people so far as his friends and those people
11 who felt close to him?

12 A I think so. I think the older the group gets
13 the longer they are going to have known -- to have known
14 him and longer he has been here so I think the older the
15 population is that knew Carl Cole the better they are
16 going to know him. I will agree to that.

17 Q When you said you had people that expressed to
18 you their prejudice or they felt as if the Defendant in
19 this case was guilty, I believe you also said or you sort
20 of indicated, I want to clear this up, there were people
21 who discussed the case without expressing that they felt
22 like they knew who did it or he was guilty, they knew he
23 was guilty or anything of that nature?

24 A Yes. In fact, Counselor, the whole range from
25 -- everybody from who adamantly was convinced that he was

1 guilty all the way through neutral and every once in
2 awhile, every great -- and I mean every once in a great
3 once in awhile you would have somebody express a
4 presumption of innocence, they were going to wait until
5 it was determined by the Court.

6 Q So the opinions expressed would be kind of like
7 the opinion expressed in any criminal case, in some of
8 them some people are going to automatically think someone
9 is guilty and some people are going to wait and
10 everything in between?

11 A Yes. And virtually everything in between.
12 Yes.

13 Q So there's nothing unusual about that?

14 A I don't think so.

15 Q You said earlier that initially there were a
16 lot of talk in the community about this case, do you find
17 that as of today, there is still as much talk or more
18 talk or less talk, how do you feel about that?

19 A I think it's like any other newsworthy event,
20 in close proximity to when it took place the more talk
21 and more discussion, the more talk took place and as time
22 passed the talk diminished somewhat and as that case
23 comes to trial and makes the newspaper it's going to
24 increase again so it will come back up but it's a
25 circular thing.

1 Q You said Mr. Cole was known in all parts of
2 Morris county that he did have a brother that lived in
3 Naples, is that correct?

4 A In the north end of the county.

5 Q Yes.

6 Mr. Carl Cole, his ranch was in the
7 Cason area, is that correct?

8 A Yes, sir.

9 Q Where was his brother's ranch? Was it in the
10 Naples area?

11 A Pretty much. Yes.

12 Q Would you agree with me that although Carl Cole
13 was known maybe county-wide he was certainly not as well-
14 known in the Naples-Omaha end of the county as he was in
15 Daingerfield?

16 A I will agree to that.

17 Q And certainly would not have been as well-known
18 in the Lone Star area or Hughes Springs area part of
19 Morris county as he would in the Daingerfield-Cason area?

20 A That's quite true.

21 Q When Mr. Cole was introducing you around when
22 you were running for County Judge and the various places
23 you went with him and were introduced to him were the
24 majority of the people that he introduced you to in the
25 age category that they would now be, although they may

1 not have been then, they would now be 65 or older?

2 A I can't say what percentage but a large
3 percentage of them would probably be in that age range
4 now.

5 Q Not all but a large percent?

6 A A goodly number.

7 MR. TOWNSEND: Pass the
8 witness.

9

10 REDIRECT EXAMINATION

11 BY MR. OLD

12

13 Q Of those people 65 years of age that he might
14 have introduced you to when he was campaigning with you
15 did they have children?

16 A Oh, yeah.

17 Q Grandchildren?

18 A Yes.

19 Q And was Mr. Cole influential in helping you
20 with those people?

21 A Let me put it this way; when I first started
22 running I don't think I knew a soul on the north end of
23 the county and Mr. Cole introduced me to business people,
24 to farmers, to ranchers, to people in the coffee shops
25 so there was a kind of -- there was a broad cross section

1 of people that he introduced me to and then, yes, they
2 had children and --

3 Q Back when you were campaigning it was what,
4 twelve, fifteen years ago?

5 A Counselor, I can't -- it was in 1982.

6 Q Did Mr. Cole seem to know a lot of people in
7 the north part of this county?

8 A Yes.

9 Q Were these people that were influential people,
10 that you consider to be "influential?"

11 A Yes.

12 Q And did he know less up there than he knew in
13 Daingerfield or in Lone Star?

14 A "Less people?"

15 Q Did he take you to see less people?

16 A No. Actually he took me to see a lot of people
17 in the north end of the county and didn't take -- he
18 didn't take me to see people in the south end of the
19 county.

20 Q Did you carry the north end of the county?

21 A Yes. I did.

22 Q What can you attribute to your success there?

23 A I wish I could say my good looks and wisdom but
24 it may have been the weakness of my opponent or lots of
25 things. I did meet a lot of people in the north end, I

1 formed a lot of good friendships in the north end.

2 Q Do you think Carl Cole had anything to do with
3 that?

4 A Carl Cole had -- he opened the door, yes, he
5 did.

6 MR. OLD: Pass the witness.

7 MR. TOWNSEND: No further
8 questions.

9 THE COURT: May this witness
10 be excused?

11 MR. TOWNSEND: Yes.

12 THE COURT: Thank you for
13 being here. You may be excused.

14 Next witness, please.

15 MR. OLD: Grover Dyas.

16

17 GROVER DYAS

18 was called as a witness and, having been first duly sworn
19 by the Court, testified as follows:

20

21 DIRECT EXAMINATION

22 BY MR. OLD

23

24 Q Would you please state your name?

25 A Grover Dyas, "D-Y-A-S."

1 Q Where do you live, Mr. Dyas?

2 A 208 Highland.

3 Q Is that Daingerfield or Lone Star?

4 A Daingerfield.

5 Q How long have you lived in Morris county?

6 A About nine years I think.

7 Q Did you know Carl Cole?

8 A Yes, sir.

9 Q And how did you come to know him?

10 A I met him the first time I ever went to Cason,
11 that was back in the early 50s, he was -- he was a friend
12 of my wife's family.

13 Q From the early 50s until you moved here did you
14 come back and forth into Morris county and visit?

15 A Yes, sir.

16 Q Who was your wife?

17 A Pardon?

18 Q What was her maiden name?

19 A "Minter."

20 Q Was Carl Cole a well-known man in this
21 county?

22 A Yes, sir.

23 Q How well-known would you say he was?

24 A Well, I would say everyone I know knew him.

25 Q How did -- from what they said about him how

1 did they feel about Mr. Cole?

2 A Well, everyone I know spoke well of him.

3 Q Do you know Mr. Wardlow?

4 A Yes, sir.

5 Q Have you heard people comment and talk about
6 the accusation against Mr. Wardlow so far as him being
7 accused and of having killed Mr. Cole?

8 A Yes, sir. I have.

9 Q And people expressing opinions of guilt as to
10 Mr. Wardlow?

11 A Well, just about everyone said he was
12 guilty.

13 Q Do you have an opinion as to whether or not Mr.
14 Wardlow can get a fair trial in this county?

15 A Well, like I said, everyone that I have talked
16 to or heard -- hear them speak of this case they say he's
17 guilty so I really don't know.

18 Q Do you think that Mr. Carl Cole's popularity
19 would cause the prejudice against this -- against Mr.
20 Wardlow in this county?

21 A I would say yes, sir.

22 Q Do you believe that it would?

23 A Yes, sir.

24 MR. OLD: Pass the witness.

25

CROSS EXAMINATION

BY MR. TOWNSEND

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Q Mr. Dyas, who asked you to testify today?

A Pardon?

Q Who brought this up to you and asked you to testify? Was it members of the Wardlow family?

A Well, yes, sir. Jimmy asked me if I would come down to the hearing and I told him that I had a doctor's appointment and I couldn't make it today but then yesterday I got a subpoena.

Q So you were asked by the Defendant in this case, you were asked by his father to appear?

A Yes, sir.

Q And are you friends with the Wardlow family?

A Well, I have known Jimmy ever since I came to Cason the first time.

Q Okay. You said of the people you had talked to they thought that Mr. Wardlow was guilty, have you talked to people in the Lone Star, Naples, Omaha --

A No, sir. Just -- I haven't made it a point to talk to anyone but in passing people would mention it and last year well just about everyone that I knew said he was.

Q And it was people in your -- in the

1 Daingerfield area?

2 A Yes, sir.

3 Q Not "Naples?"

4 A No, sir.

5 Q Not "Omaha?"

6 A No, sir.

7 Q Not "Lone Star?"

8 A No, sir.

9 Q Not "Hughes Springs?"

10 A No, sir. But --

11 MR. TOWNSEND: Thank you.

12

13 REDIRECT EXAMINATION

14 BY MR. OLD

15

16 Q What do you do, Mr. Dyas?

17 A I'm retired.

18 Q Where are you retired?

19 A From the railroad.

20 Q What did you do? Did you work for the railroad
21 for a living?

22 A Yes, sir. I am a signal maintainer.

23 Q The District Attorney cut you off, you said
24 "But", what was your response? You were trying to finish
25 an answer?

1 A Well, he asked me if I had talked to people
2 here the last year. We were -- we went to South Dakota
3 to visit my sister-in-law and in talking to some of their
4 friends there in South Dakota they said "Where are you
5 from?"

6 I told them "Daingerfield, Texas."

7 Well, then, they said that they had read
8 about the case of the boy from Daingerfield and that was
9 -- that was the only thing, they were talking about it.

10 Q Have you talked to many people or you heard
11 many people comment that Mr. Wardlow is guilty?

12 A I have heard quite a few people say it but I,
13 like I said, I have never discussed the case or anything
14 because I really don't know anything about it.

15 Q But people have brought it up to you and
16 expressed the opinion of guilt?

17 A Yeah.

18 Q Approximately how many?

19 A Oh, gosh. I don't have any idea.

20 Q Okay. "Many?"

21 A Numerous.

22 MR. OLD: Pass the witness.

23 MR. TOWNSEND: No further
24 questions, Your Honor.

25 THE COURT: May this gentleman

1 be excused?

2 MR. TOWNSEND: Yes, Your
3 Honor.

4 MR. OLD: Yes, Your Honor.

5 THE COURT: You are excused.
6 That means you don't have to stay around. Thanks for
7 being around here and I'm sorry about causing you to miss
8 your appointment.

9 Next witness, please, Mr. Old.

10 MR. OLD: William McCoy.

11

12 WILLIAM H. MCCOY

13 was called as a witness and, having been first duly sworn
14 by the Court, testified as follows:

15

16 DIRECT EXAMINATION

17 BY MR. OLD

18

19 Q Please state your name.

20 A William H. McCoy.

21 Q How are you employed, Mr. McCoy?

22 A I'm self-employed, an attorney here in
23 Daingerfield.

24 Q How long have you been so?

25 A I have had my own office here in Daingerfield

1 since the first week in August, 1987, I have been
2 practicing law since 1984.

3 Q How long have you lived in Morris county?

4 A All my life except for the seven years I went
5 off to be educated.

6 Q You were born and raised here?

7 A Yes, sir.

8 Q What part of the county?

9 A I was actually born in Hughes Springs at the
10 Steed Hospital and I was reared here in Daingerfield and
11 since I have been five years old I have lived on what
12 they call "the Black Mountain Road" or "Holt Road" now.

13 Q Now in your practice and over the years have
14 you developed friends and clients in all parts of this
15 county?

16 A Yes, sir.

17 Q And you are aware of what Mr. Wardlow is
18 accused of?

19 A Yes, sir. I am.

20 Q Have you heard a lot of discussion or talk
21 about that?

22 A Yes, sir. I have.

23 Q More than you usually hear when someone is
24 charged with murder?

25 A Much more just because of who the victim was.

1 Q Who was the victim?

2 A Carl Cole.

3 Q What about the victim caused more talk than in
4 other cases?

5 A Mr. Cole was well-known and he was well liked.
6 Everybody that knew him said he would give you the shirt
7 off his back, he would do anything to help you.

8 In particular "Mr. Wardlow didn't have
9 to do what he done to the old man, he would have gave him
10 the pickup without having to kill him."

11 Q That's what you are hearing?

12 A Yes, sir.

13 Not as much now as it was when it first
14 happened and even six or eight months later it was still
15 a lot of talk.

16 Q Let me ask you, I mean you have been involved
17 in these matters both as a lawyer and observer on many
18 occasions?

19 A Yes, sir.

20 Q Is it reasonable to predict that the same talk
21 will start back up when this case commences for trial?

22 A Yes, sir. It can.

23 In fact we just had another capital
24 murder case in July of this year and everybody started,
25 said, "Well, what happened to the guy that killed Mr.

1 Cole? What have they done with him?"

2 I am afraid because of this most recent
3 one there is going to be a lot of flack and fallback on
4 the Wardlow case because people are starting to ask "What
5 happened? Why is it taking so long, hang him."

6 Q Do you have an opinion whether or not Mr.
7 Wardlow can get a fair trial in this case?

8 A I mean it would be extremely difficult for him
9 to get a fair trial here in Morris county.

10 Q And it's based on your knowledge of Mr. Cole
11 and his popularity?

12 A Yes, sir.

13 Q What are people telling you? What do they say
14 when they talk about the Wardlow charge?

15 A Lots of people are saying, "Yeah, we'll give
16 him a fair trial then we will hang him, make sure the
17 tree is high enough that it breaks his neck as soon as
18 he falls."

19 Q Have you heard that opinion expressed or
20 similar to that?

21 A Yes, sir.

22 Q On one occasion or several occasions?

23 A I never kept a count but I would say that it's
24 probably going to be 75, 100, 150 occasions.

25 Q Where people have flat said "Let's give him a

1 fair trial and then hang him?"

2 A Yes, sir.

3 Q When people make that statement "Let's give him
4 a fair trial and let's hang him" does that indicate to
5 you whether or not a man can get a fair trial in this
6 county?

7 A It indicates to me, and I'm not representing
8 this man, and he's a dead duck here in Morris county,
9 he's going to get the death penalty.

10 Q The people that you talked to can you identify
11 with any particular part of the county or spread over the
12 county?

13 A There's more from the south end of the county
14 but then I represent and have friends in Omaha, Naples,
15 the north end in my age group and they have all expressed
16 the same opinion.

17 Q Do you think there's any less prejudice against
18 him in the north part of this county than the south part?

19 A I think it's the same because he was so well-
20 known.

21 Q Do you practice criminal law?

22 A I do, Mr. Old.

23 Q What percentage of your practice is criminal
24 law?

25 A Probably 60 to 65 percent of my practice is

1 devoted to criminal law.

2 Q You are like I am, we are country lawyers and
3 we do a little bit of everything?

4 A Yes.

5 Q Your preference is for criminal law?

6 A Yes.

7 In fact I have made the statement many
8 times if I could do nothing but criminal law that's all
9 I would choose to do in the practice of law.

10 Q Has this crime received a lot more newspaper
11 coverage than is usually received by a crime in this
12 county?

13 A Yes, sir. I believe it has.

14 Q You have been present in the courtroom, have
15 you not?

16 A Yes, sir.

17 Q One of the articles that was introduced in
18 evidence starts out "Mr." -- words to the effect that
19 "Mr. Cole was killed in cold blood?"

20 A Yes, sir.

21 Q Is that a pretty strong statement to have to
22 contend with in a newspaper if you are representing a
23 man?

24 A It's a very strong statement. The paper had
25 already found him guilty and is just waiting to execute

1 him in my opinion.

2 MR. OLD: Pass the witness.

3
4 CROSS EXAMINATION

5 BY MR. TOWNSEND

6
7 Q Mr. McCoy, in the years that you have practiced
8 law I think all of this has been here in Morris county?

9 A Practiced law, I originally started in Hughes
10 Springs with Pat Florence and I was working for her then
11 I went to Naples and officed with Jim Clark for awhile
12 and then opened my own in August in '87 then, it's not
13 limited to Morris county, I practice in surrounding
14 counties even so far as Lufkin and Nacogdoches on things.

15 Q In all of your practice of law you have from
16 the criminal standpoint, we are talking about a criminal
17 case, you have always 100 percent of the time represented
18 the defendant, is that correct?

19 A In criminal law?

20 Q Yes, sir.

21 A All except for the time I was City Attorney for
22 Lone Star and was City Prosecutor at that point in time.

23 Q So you have never prosecuted felony cases, you
24 have never represented the State of Texas, you have
25 always represented the criminal defendant, is that

1 correct?

2 A That's correct.

3 Q In fact in addition to that you are a past
4 political opponent of mine, is that correct?

5 A That's true.

6 Q These people that you heard making these
7 statements about Billy Wardlow or about Carl Cole's death
8 about "hanging him" or "stringing him up" or something
9 like that, it's quite possible a lot of those people may
10 have been joking?

11 A Well, --

12 Q People saying stuff on the street doesn't mean
13 necessarily that's how they would act if they are on the
14 jury doing serious duty?

15 A Mr. Townsend, I would like to give most
16 everybody the benefit of the doubt but these particular
17 individuals I took to be very sincere and earnest about
18 what they were saying because they -- they knew Mr. Cole
19 personally and had known him for years there.

20 Q So each and everyone of them was
21 serious?

22 A The particular ones that I have talked to on
23 numerous occasions, I'm sure some of them were just
24 somewhat joking but as a criminal defense lawyer you
25 don't take that as a joke, you know, when people start

1 talking about that when you have got a man's life in your
2 hands.

3 MR. TOWNSEND: Pass the
4 witness.

5
6 REDIRECT EXAMINATION

7 BY MR. OLD

8
9 Q Are you for law enforcement?

10 A I beg your pardon?

11 Q Are you for law enforcement? Do you believe
12 the laws of the State of Texas and United States ought
13 to be enforced?

14 A Yes, sir.

15 Q Do you believe that everyone, every man is
16 entitled to his right to a fair trial?

17 A Yes, sir.

18 Q Do you believe that Mr. Wardlow can get a fair
19 trial in this county based on the prejudice and the
20 attitude there is in this county toward him for
21 supposedly killing Mr. Cole?

22 A No, sir. I sure don't.

23 MR. OLD: Pass the witness.
24
25

RECROSS EXAMINATION

BY MR. TOWNSEND

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4 Q Mr. McCoy, we had a change of venue hearing
5 about a year ago on another capital murder case, you
6 testified on that capital murder case that he couldn't
7 get a fair trial either?

8 A Yes, sir. Tony Walker case.

9 Q "Tony Walker?"

10 A Yes, sir.

11 Q And that case received newspaper publicity and
12 that was part of your reason, I assume would be part of
13 your reason for saying he couldn't get a fair trial?

14 A Yes.

15 Of course at that time that Wardlow
16 accusation came about also, Mr. Townsend, Tony Lee Walker
17 was first and I believe the Carl Cole murder was next and
18 there was a lot of publicity at that time with the
19 Wardlow matter going on.

20 Q There have been two capital murder cases in
21 Morris county that -- since we can recall, since we have
22 been practicing law?

23 A Yes, sir.

24 Q And you didn't think either one of them should
25 be tried in Morris county by the citizens of Morris

1 county, is that correct?

2 A No. Sure didn't.

3

4

REDIRECT EXAMINATION

5

BY MR. OLD

6

7 Q There are now three capital murder trials in
8 this county pending?

9 A There's the one from Jenkins as I understand,
10 I don't remember the guy's name.

11 Q Excuse me. One of these has been tried?

12 A Yes, sir. Tony Lee Walker has been tried, the
13 one from Jenkins, I don't remember his name, burning of
14 some type of mobile home then there's the Wardlow case
15 and he's the defendant and the Randy Byas case that just
16 happened this past July.

17 MR. OLD: Pass the witness.

18 MR. TOWNSEND: No further
19 questions.

20 You may step down.

21 Joel Bumpass.

22 THE COURT: Okay, Mr. Old,
23 your witness.

24

25

JOEL BUMPASS

was called as a witness and, having been first duly sworn
by the Court, testified as follows:

DIRECT EXAMINATION

BY MR. OLD

Q Please state your name.

A Joel Bumpass.

Q Where do you live, Mr. Bumpass?

A 424 Lindsey, Daingerfield.

Q Where do you work?

A Lone Star Tubular Service in Lone Star, Texas.

Q Do you understand that Billy Wardlow is accused
with having caused the death of Mr. Carl Cole?

A Yes, sir.

Q You heard a lot of people talk about that in
Morris county since Mr. Cole died?

A Yes, sir.

Q Have they expressed opinions to you that as to
whether he was innocent or guilty?

A Yes.

Q What opinions have they expressed to you?

A That he was guilty.

Q Were they pretty strong and firm in those

1 opinions?

2 A Yes, sir.

3 Q Have they pretty well determined what they want
4 to do with him?

5 A Yes, sir.

6 Q And what was that?

7 A Death penalty.

8 Q How many people do you think that you have
9 talked to that have expressed that opinion?

10 A Well, I couldn't give you an accurate number,
11 seven, eight, ten people.

12 Q Have you heard talk about a letter?

13 A Yes. I have.

14 Q Will you tell the Court what you heard about
15 a letter?

16 A Well, I heard that the Wardlow boy wrote a
17 letter to the sheriff explaining or confessing his guilt
18 and saying that he was ready to receive the needle.

19 Q Okay. And have you heard that on more than one
20 occasion?

21 A I heard it a couple of times. Yes.

22 Q When those words were spoke were there other
23 people present other than you and the speaker?

24 A Yes, sir.

25 Q Was it spoke like in a break area or coffee

1 shop or that type?

2 A Yes. People talk. We were just standing
3 around. Yes.

4 Q Do you know whether that was true, do you know
5 whether such a letter exists?

6 A I do not know that.

7 Q But people believe that it does based on what
8 they said to you?

9 A Yes, sir.

10 Q Did you know Mr. Cole?

11 A No, sir. I did not.

12 Q Do you know of him?

13 A No, sir. I did not.

14 Q Okay. Since his death have you learned a lot
15 about him?

16 A Yes, sir. I have.

17 Q What have you learned about him?

18 A I heard -- I learned that he was a fine fellow
19 and that's about all.

20 Q Did you learn that he was well-known in this
21 county?

22 A Yes.

23 Q Do you have an opinion as to whether or not
24 Billy can get a fair trial in this county?

25 A I don't believe he can.

1 Q Is that based upon the prejudice that you have
2 seen against him in this county?

3 A Yes, sir. It is.

4 MR. OLD: Pass the witness.

5

6

CROSS EXAMINATION

7

BY MR. TOWNSEND

8

9 Q Mr. Bumpass, you talked about a letter that you
10 heard something about, you wouldn't think it would be
11 unusual to have rumors about all sorts of things in
12 criminal cases, would you?

13 A Pardon me?

14 Q You wouldn't consider it to be unusual to have
15 rumors floating around in criminal cases?

16 A I don't think it would be unusual. No.

17 Q So that really wasn't anything unusual so far
18 as you could tell?

19 A A letter? Are you talking about the letter per
20 se?

21 Q That was there, a rumor?

22 A If you are talking about just a rumor, no, I
23 don't think that it's that unusual.

24 Q How did you come to testify today, Mr. Bumpass?
25 Were you -- did -- who contacted you about testifying?

1 You didn't show up, who talked to you
2 about it?

3 A I was subpoenaed and the lawyer called me the
4 night before.

5 Q Okay. "The lawyer" you are talking about Mr.
6 Old here? (Indicating)

7 A Yes, sir.

8 Q Okay.

9 A And also Mr. Wardlow had asked me, you know,
10 would I, you know, if I could testify.

11 Q Are you talking about the Defendant's father?

12 A Yes, sir. I am.

13 Q And is he someone that you have known for a
14 period?

15 A I have known Mr. Wardlow about three months.

16 Q So as the result of that friendship with Mr.
17 Wardlow he talked to you about -- just in casual
18 conversation talked to you about the case?

19 A No. He didn't never really talk to me about
20 the case, he asked me one time if I thought that, you
21 know, whether I thought his boy could get a fair trial
22 or not.

23 Q Yes.

24 A But so far as our casual conversation, we have
25 never discussed the case with him.

1 Q So you just -- I think I misstated what I mean,
2 I didn't mean that you had really discussed the facts of
3 the case with him but just that you discussed -- he asked
4 you about what you thought?

5 A One time he did. Yes.

6 Q And did he, I suppose notified Mr. Old to
7 contact you?

8 A I don't know how Mr. Old contacted me but he
9 did contact me.

10 Q Mr. Bumpass, you live in Daingerfield I
11 believe?

12 A Yes, sir. I do.

13 MR. TOWNSEND: Pass the
14 witness.

15

16 REDIRECT EXAMINATION

17 BY MR. OLD

18

19 Q Mr. Bumpass, do you associate with people from
20 all over Morris county as well as surrounding counties?

21 A Well, I do in my work. Yes.

22 Q Do people from the north part of the county
23 that work with you?

24 A You know, in the steel mill and around there
25 is a few people. Yes.

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MR. OLD: Pass the witness.

MR. TOWNSEND: No further
questions.

THE COURT: Thank you, Mr.
Bumpass, I appreciate you being here, you do not have to
remain.

Next witness.

MR. OLD: Johnny Floyd.

THE COURT: Please have a
seat.

Mr. Old.

JOHNNY FLOYD

was called as a witness and, having been first duly sworn
by the Court, testified as follows:

DIRECT EXAMINATION

BY MR. OLD

Q Please state your name.

A Johnny Floyd.

Q Where do you live, Mr. Floyd?

A I live in Daingerfield.

Q How long have you lived in Daingerfield?

A Since 1949.

1 Q Did you know Mr. Carl Cole during his lifetime?

2 A Yes, sir.

3 Q How well did you know him?

4 A I have been knowing him since 1949 doing some
5 cow trading and just a good personal friend of the
6 family.

7 Q Were your family and his family close friends?

8 A Yes.

9 Q Was Carl a popular man in this county?

10 A Yes, sir.

11 Q Was he a respected man?

12 A Yes. He was.

13 Q And was he widely known or was he notoriously
14 known?

15 A I would say farm-wise people -- farm-wise which
16 is about all there was in the country, knew him well.

17 Q His popularity was not limited to any
18 particular part of this county?

19 A No. I would say no.

20 Mostly from here to the north end more
21 than anywhere else.

22 Q And "north end" you are talking about Omaha-
23 Naples?

24 A Omaha-Naples area.

25 Q Have you heard a lot of talk about facts giving

1 rise to his death or the fact that Mr. Wardlow has been
2 charged with having murdered him?

3 A Yes.

4 Q And are people expressing opinions as to
5 whether or not Mr. Wardlow is guilty?

6 A Have I heard that?

7 Q Yes.

8 A Oh, certainly.

9 Q And I mean have you heard anybody express an
10 opinion that he wasn't guilty?

11 A No. I haven't.

12 Q Are people pretty strong in their opinions?

13 A Yeah. Everybody that I -- that has ever
14 mentioned it or talked about it has been strong in their
15 opinion.

16 Q Is there a lot of resentment toward Mr. Wardlow
17 for having --

18 A Definitely.

19 Q -- for having killed Mr. Cole?

20 A Definitely.

21 Q Would it be a fair statement that Mr. Cole was
22 a loved man throughout this county?

23 A Mr. Cole was a businessman but he had a lot of
24 friends but he was a fair businessman. I mean in
25 speaking if he put it on you a little bit, well, a lot

1 of business people might do that but he was -- he was
2 -- yeah. He was a respected businessman.

3 Q Do you have an opinion as to whether or not
4 Billy Wardlow can get a fair trial in this county?

5 A No. I don't think he can get a fair trial in
6 this county. I don't personally.

7 Q And it's based on your observation what others
8 have said and upon Mr. Cole's general good reputation and
9 popularity?

10 A Well, like I said, I have been knowing Carl
11 Cole and dealing in the cattle business and stuff a long
12 time and I have used him a lot of times for advice and
13 stuff like that because he was a well -- he knew cattle
14 and he knew land and all that so I have used that as a
15 stepping stone a lot of times when I needed some advice.

16 Q And you were a good friend of his?

17 A Yes. Very good friend.

18 MR. OLD: Pass the witness.

19
20 CROSS EXAMINATION

21 BY MR. TOWNSEND

22
23 Q Mr. Floyd, let me guess on this; are you
24 friends with the Wardlows?

25 A Yes. Yes. The Wardlow family is a good

1 family.

2 Q Did you come to testify today as a result of
3 talking to Jimmy Wardlow?

4 A Yes.

5 Q So he talked to you about this and later on you
6 received a subpoena?

7 A Right.

8 Q You said Mr. Cole was well-known among the
9 farmers?

10 A Yes.

11 Q Because he was involved in farming?

12 A Farming and ranching.

13 Q And you said something in your statement about
14 "That was about all that was known in this county", are
15 you talking about back in years past, that farming was
16 about all the industry that was going on?

17 A Well, Morris county was basic farming and
18 ranching, there was no industry in Morris county so that
19 would be the area that it was most well-known for.

20 Q And that would -- you used the term "was
21 known", are you talking about back in the past years?

22 A No. He had cattle up --

23 Q When he was a younger man?

24 A -- he had cattle up until the day he was
25 killed.

1 Q Right. But would it be your opinion that was
2 a -- how old are you, Johnny?

3 A 65.

4 Q Would it be your opinion that Mr. Cole was very
5 well-known among those folks that are your age and
6 older?

7 A Yes.

8 Q Would it be your opinion that it would be
9 somewhat less, although I know you don't know exactly
10 but he would be somewhat less well-known among those
11 people that are younger than you?

12 A Right. Yeah. I would say -- say the younger
13 generation that he was nosey, he was -- kept up with what
14 was going on, he knew what was happening.

15 Q He kept up with current affairs?

16 A But the majority of people would be the older
17 generation, older people.

18 Q So the majority of people that would consider
19 themselves to be good friends of his you might say would
20 be the older people?

21 A That's right.

22 MR. TOWNSEND: Pass the
23 witness.

24

25

REDIRECT EXAMINATION

BY MR. OLD

Q You are talking about a friend, you are talking about somebody you socialize with, visit in their home, go to church with?

A Yes.

Are you talking about Carl?

Q Yes.

A Yes.

Q And you say most of his friends were in his age group?

A Well, he said "majority", now, he had a lot of friends in all age groups because he messed with everybody and that but the majority I would say were older people.

Q "Friend" is kind of a relative term, I might meet you one time and tell somebody that "Johnny Floyd was my friend and a good man", I might not have ever visited in your home but I may consider you to be "my friend" and I might not even know you and say "You are a good man and have a good reputation" just based on what others had told me about you.

Despite Mr. Cole's age was he well-known and that is known for who he was and his good reputation

1 by all age groups in this county?

2 A Oh, absolutely. Yes. The answer is "yes."

3 MR. OLD: Pass the witness.

4 MR. TOWNSEND: No further
5 questions.

6 MR. OLD: One more question;
7 did anybody ask you to do anything other than --

8 MR. TOWNSEND: Your Honor, --

9 THE COURT: Wait just a
10 minute.

11 MR. TOWNSEND: I didn't ask
12 any question I believe.

13 THE COURT: What was it you
14 wanted to ask?

15 MR. OLD: I wanted to ask him
16 if anybody asked him to do anything but to come here and
17 tell the truth.

18 MR. TOWNSEND: Your Honor,
19 that's not even a question, I didn't in any way --

20 THE COURT: The problem is
21 that there was not any recross so sustained.

22 But for the purpose of the record I'm
23 going to let him answer just so we don't have to call him
24 back or something at some time later.

25 The question would be; has anyone asked

1 you to say anything except whatever your truthful opinion
2 was?

3 THE WITNESS: No. There has
4 not.

5 MR. OLD: Pass the witness.

6 THE COURT: That's in the
7 record as a "bill", not as "direct examination" but I
8 rule that it's not admissable.

9 Now, can this gentleman be excused for
10 today?

11 Thank you for being here, Mr. Floyd.

12 Call your next witness.

13
14 RUSSELL GUEST

15 was called as a witness and, having been first duly sworn
16 by the Court, testified as follows:

17
18 DIRECT EXAMINATION

19 BY MR. OLD

20
21 Q Please state your name.

22 A Curtis R. Guest.

23 Q Where do you live, Mr. Guest?

24 A Cason.

25 Q How long have you lived in Morris county?

1 A All my life.

2 Q Did you know Mr. Carl Cole?

3 A I knew who he was. Yes, sir. I knew him by,
4 you know, when I saw him around town a lot.

5 Q Did you know him by reputation more than a
6 personal knowledge?

7 A Probably. Yes, sir.

8 Q How old are you?

9 A I am 34.

10 Q Okay. What reputation did you know him to
11 have?

12 A Personally like I said I didn't know him that
13 well but everybody I knew, you know, liked him, nice man.
14 I knew him more through hearsay from my mother if I may
15 add that.

16 Q And was what you knew of him through your
17 mother and through others good?

18 A Yes, sir.

19 Q Have you heard a lot of people talking about
20 the fact that Mr. Wardlow is accused of having murdered
21 him?

22 A Yes, sir.

23 Q Okay. Have they expressed to you opinions as
24 to whether or not they believe Mr. Wardlow to be guilty?

25 A More so in that they don't know that he's

1 guilty, that he's not -- you know what I'm saying,
2 everything I have heard was more towards that, you know,
3 he did do it -- I'm having trouble.

4 Q It's not a matter of saying "He's guilty", they
5 just come out and say, "He murdered Mr. Cole?"

6 A Yes.

7 Q And have they expressed opinions as to what
8 ought to be done to him for doing it?

9 A Well, yes, sir.

10 Q What opinion have they expressed?

11 A Everybody that I have heard, you know, leans
12 toward the maximum.

13 Q That would be the death penalty?

14 A Yes, sir.

15 Q Is what you are telling me as to what people
16 have told you is kind of they take it as a forgone
17 conclusion or fact that he's guilty of having killed Mr.
18 Cole?

19 A From everything they have seen and heard. Yes,
20 sir.

21 Q Have you talked to them, have you heard a lot
22 of people say that?

23 A I have changed jobs since this time so where
24 I work now at Lone Star I haven't, to be honest with you
25 I haven't thought a whole lot about the case until I was

1 approached, you know, to come in today. But until then,
2 yes, sir.

3 Q How many people have you heard comment on it?

4 A A dozen.

5 Q Your best estimate?

6 A A dozen just where I work. Yes, sir.

7 Q And did any of that dozen say, "Well, he's
8 innocent, I believe he's innocent?"

9 A No, sir.

10 Q So your group of twelve has already found him
11 guilty?

12 A Basically. Yes, sir.

13 MR. OLD: Pass the witness.

14 THE COURT: Mr. Townsend.

15
16 CROSS EXAMINATION

17 BY MR. TOWNSEND

18
19 Q Mr. Guest, you are from Cason, is that right?

20 A Yes, sir.

21 Q Are you friends with the Wardlow family?

22 A I know them just in the last year, I have
23 joined the volunteer fire department and come to know
24 them, also I worked with Jimmy Wardlow for Collier I
25 guess about fifteen years ago.

1 Q And Jimmy and his wife are both involved in
2 the volunteer fire department in Cason, is that correct?

3 A Yes, sir.

4 Q And you are a member there?

5 A Yes, sir.

6 Q Mr. Guest, you signed an affidavit I believe
7 stating that you -- that you had read the Motion for
8 Change of Venue, you basically -- and you are familiar
9 with what it said?

10 A Yes.

11 Q And that you felt that there was so great a
12 prejudice and combination against the Defendant that he
13 couldn't obtain a fair trial, it states in the chain of
14 venue, which you said that you have read, that there is
15 a dangerous combination instigated by influential persons
16 against the Defendant, it kind of makes it sound like
17 there's a conspiracy or something against the Defendant.

18 Do you know of anything such conspiracy
19 of anyone that is influential to deprive this man of his
20 rights?

21 A I wouldn't use the term "conspiracy."

22 Q How about the word "combination", do you know
23 of a combination instigated by any influential people?

24 A No, sir.

25 Q Even though you signed that affidavit and said

1 you did know of such a combination you in fact, you do
2 not know of any such combination?

3 A No, sir. I don't.

4 MR. TOWNSEND: Pass the
5 witness.

6

7 REDIRECT EXAMINATION

8 BY MR. OLD

9

10 Q Do you believe the twelve people down there
11 that expressed opinions to you by what they have said are
12 against Billy Wardlow?

13 A Yes, sir.

14 Q Do you believe those people to some degree to
15 have influence in this county?

16 A Yes, sir.

17 Q Has anyone asked you to do anything other than
18 express your true opinion?

19 A To be honest with you I haven't talked about
20 the case to anyone other than when you just basically
21 asked me if I felt like he could get a fair trial and
22 that was it.

23 I haven't been influenced if that's what
24 you are asking.

25 MR. OLD: Pass the witness.

1 MR. TOWNSEND: No further
2 questions.

3 THE COURT: Thank you for
4 being here, Mr. Guest.

5 You are excused. That means you don't
6 have to hang around unless you want to.

7
8 FLETCHER HARTGROVE
9 was called as a witness and, having been first duly sworn
10 by the Court, testified as follows:

11
12 DIRECT EXAMINATION

13 BY MR. OLD

14

15 Q Please state your name.

16 A Fletcher Hartgrove.

17 Q Where do you live, Mr. Hargrove?

18 A Daingerfield.

19 Q Where do you work?

20 A Brown & Root, Longview.

21 Q How long have you lived in Morris county?

22 A Probably 45 years total.

23 Q How old are you?

24 A 50.

25 Q Did you know Mr. Carl Cole during his lifetime?

1 A Yes, sir.

2 Q Did you know him well?

3 A Yes, sir.

4 Q And did you like him?

5 A Yes, sir.

6 Q Was he a popular man in this county?

7 A Yes, sir. He was.

8 Q Was he a well-known man in this county?

9 A Yes, sir. He was.

10 Q Was he known pretty well all over the county?

11 A Yes, sir.

12 Q Do you know his brother?

13 A Yes, sir. Homer.

14 Q How well do you know his brother?

15 A Not as well as I knew Carl.

16 Q Through a speaking acquaintance with him at
17 least?

18 A Yes, sir.

19 Q Do you know Mr. Wardlow, Billy Wardlow?

20 A Sure do. Yes, sir.

21 Q Have you heard talk about Mr. Wardlow having
22 murdered Mr. Cole?

23 A Yes, sir. I have.

24 Q Have you heard people express opinions about
25 what happened?

1 A Yes, sir.

2 Q Have they expressed an opinion as to whether
3 or not he is guilty?

4 A Yes, sir.

5 Q How many occasions have you heard people
6 expressed that opinion?

7 A Do you want -- several different times.

8 Q I mean five, ten, fifteen?

9 A Yeah. Ten or fifteen times.

10 Q Have they treated it like it's a forgone
11 conclusion and they believe it?

12 A Yes.

13 Q And have they commented to you what they
14 thought ought to be done to it?

15 A Some have and some haven't.

16 Q And those that have, what has their
17 recollection been?

18 A Death penalty.

19 Q Do you have an opinion as to whether or not
20 Billy can get a fair trial in this county?

21 A No, sir. I don't think he could.

22 Q You don't think he could get a fair trial?

23 A No, sir.

24 MR. OLD: Pass the witness.

25 THE COURT: Mr. Townsend.

CROSS EXAMINATION

BY MR. TOWNSEND

Q Mr. Hartgrove, are you friends with the Wardlow family?

A Yes.

Q Are you here after talking to Jimmy Wardlow, he talked to you about this change of venue hearing?

A Yes, sir.

Q Had he talked to you about everything in the change of venue hearing?

A Yes. He did.

Q Have you known the Wardlow family, you know, approximately as long as you have know the Cole family?

A Yes, sir.

Q So your friendship with them would be strong as well?

A Yes, sir. It would.

Q Okay. So basically you are here today to try to help the Wardlow family?

A Right.

MR. TOWNSEND: Pass the witness.

REDIRECT EXAMINATION

BY MR. OLD

Q Did you come here to express an opinion that was not your opinion?

A No.

Q You were a friend of Carl Cole's and you are a friend of the Wardlows?

A Right.

Q Is your opinion based on what you believe?

A Yes.

Q Hasn't been influenced by Jimmy Wardlow or any of the Wardlow family?

A No. I have not.

MR. OLD: Pass the witness.

MR. TOWNSEND: No further questions, Your Honor.

MR. OLD: Your Honor, can we excuse this witness? I would excuse him.

I also had his wife Wanda Hartgrove subpoenaed and I would excuse her at this time.

THE COURT: That means you and your wife don't have to hang around the courthouse any further today.

Thank you for being here.

1 Who will be next?

2
3 ROBERT HENDERSON

4 was called as a witness and, having been first duly sworn
5 by the Court, testified as follows:

6
7 DIRECT EXAMINATION

8 BY MR. OLD

9
10 Q Please state your name, sir.

11 A Robert Henderson.

12 Q Where do you live, Mr. Henderson?

13 A Cason.

14 Q Is that in Morris county, Texas?

15 A Yes, sir.

16 Q How long have you lived in Morris county?

17 A About 65 years.

18 Q How old a man are you?

19 A 76.

20 Q Did you know Mr. Carl Cole during his lifetime?

21 A Yes, sir.

22 Q And how long -- when did you first remember Mr.
23 Cole?

24 A Oh, I imagine around fifteen or twenty years
25 ago, something like that.

1 MR. OLD: Judge, can you hear
2 the witness?

3 THE COURT: Sure.

4 MR. OLD: What was Mr. Cole's
5 reputation in this county, that is what did people think
6 about him, what was Mr. Cole's reputation in this county?

7 THE WITNESS: Well, I really
8 don't know.

9 Q (BY MR. OLD) Sir?

10 A I don't know what his reputation was in the
11 county.

12 Q Did people like him?

13 A Some did and some didn't, you know, just like
14 you will, other people.

15 Q Do you know Billy Wardlow is charged with
16 having murdered him?

17 A Yes. I have heard that.

18 Q Have you heard a lot of people talking about
19 this?

20 A Yeah. I have heard them talk about it.

21 Q Have they told you whether or not they think
22 he's guilty or they didn't?

23 A They didn't say that.

24 Q What?

25 A No. They didn't say whether he was or not.

1 Q Do you have an opinion as to whether or not Mr.
2 Wardlow can get a fair trial in this county?

3 A I don't think he would. I don't think he
4 would. Not in this county.

5 Q Can you tell me why he wouldn't get a fair
6 trial in this county?

7 A My idea would be because Mr. Carl was an older
8 citizen and he's better known than the kid.

9 Q People angry about Mr. Cole having been
10 murdered?

11 A Not that I've heard of.

12 Q You haven't?

13 A No.

14 MR. OLD: Pass the witness.

15 MR. TOWNSEND: No questions,
16 Your Honor.

17 THE COURT: Thank you, Mr.
18 Henderson. You may step down.

19 You don't have to hang around unless you
20 want to.

21 Mr. Hill.

22

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JAMES HILL

was called as a witness and, having been first duly sworn
by the Court, testified as follows:

DIRECT EXAMINATION

BY MR. OLD

Q Please state your name.

A James Hill.

Q Where do you live, Mr. Hill?

A 1100 Webb in Daingerfield.

Q How are you employed, what do you do for a
living?

A I am retired, I'm retired and work volunteer
around town.

THE COURT: Volunteer what?

THE WITNESS: Volunteer
fireman, volunteer EMS.

THE COURT: Thank you.

MR. OLD: What did you do
prior to retiring?

THE WITNESS: I was a truck
driver, hauled automobiles.

Q (BY MR. OLD) How long have you lived here?

A Almost nine years.

1 Q Did you know Mr. Carl Cole?

2 A I knew him when I met him, when I seen him.
3 I didn't know him that well.

4 Q Did you know him by reputation?

5 A Reputation and I have met him a couple of
6 times.

7 Q What was his reputation?

8 A So far as I know he was known as a contrary
9 person but he was a good man.

10 Q Have you heard a lot of talk about him having
11 been murdered by Billy Wardlow?

12 A For several months right after it happened,
13 yes, for about three or four months right after it
14 happened that's about all you could hear in the Dairy
15 Queen and other place.

16 Q Do you go to the Dairy Queen and drink coffee
17 a lot?

18 A Yes.

19 Q Go other places and drink coffee and socialize?

20 A Yes.

21 Q What were people saying? What was the
22 consensus of opinion?

23 A Well, it was just as far as I could tell it was
24 they -- everybody was talking about Billy murdering the
25 man when he was so old and everything and couldn't have

1 hurt him if he had wanted to and so forth.

2 Q Were they outraged about it?

3 A Some. Yes.

4 Q Did they express the opinion that he did it?

5 A His name was mentioned by everyone that I heard
6 as the one that did it, you know.

7 Q Do you have an opinion based upon what you have
8 heard as to whether or not Mr. Wardlow could get a fair
9 trial?

10 A Do I have an opinion?

11 Q Yes.

12 A Yes. I do have an opinion.

13 Q What is that opinion?

14 A From what I have heard and all that he did it.
15 Yes.

16 Q Do you have an opinion that he committed the
17 crime?

18 A That Billy committed the crime. Yes.

19 Q You believe that?

20 A I wouldn't say I believe it but from what I
21 have heard that's the opinion that I have drawn. I
22 haven't heard any of the evidence.

23 Q Now, do you have an opinion as to whether or
24 not he can get a fair trial in this county?

25 A I have the opinion that he probably cannot

1 because everyone knows him, everyone knows his family and
2 everyone knows Mr. Cole's family and from all everybody
3 has been saying that I have heard they think he did it
4 and I don't see how anyone can put all that aside to
5 listen to the evidence. I know I would have -- I would
6 have a tough time doing it.

7 Q Have they expressed an opinion to you as to
8 what ought to be done to him for killing him?

9 A A few. Have made statements like "The same
10 thing should be done to him that he did to Mr. Cole" or
11 "He should spend the rest of his life in jail" or
12 something like that.

13 But that's just the normal way people
14 talk.

15 MR. OLD: Pass the witness.

16
17 CROSS EXAMINATION

18 BY MR. TOWNSEND

19
20 Q Mr. Hill, are you friends with the Defendant
21 Billy Wardlow?

22 A I consider myself to be friends with them, with
23 his mother and father and him. I have known him since
24 he was just a kid.

25 Q More so friends with his parents?

1 A More so because I have had more dealing with
2 them for over a longer period.

3 Q Mr. Hill, you don't -- your knowledge of people
4 in Morris county, you have a lot of knowledge of people
5 in the Daingerfield area and Cason area, is that right?

6 A In the Daingerfield-Cason and all this south
7 end of the county that I was raised or I was born in the
8 north end of the county and I know a lot of people up
9 there, a lot of my relatives up there and I know a lot
10 of people through them.

11 Q But your discussion about this case would be
12 discussions with people that are basically from this end
13 of the county for the most part?

14 A Basically.

15 At the time this happened I was working
16 ambulance 24 hours a day seven days a week on standby and
17 I would stop at the Dairy Queen and in Omaha and I talked
18 to a number of people up there and the opinion was the
19 same. The discussions were primarily the same as going
20 on down here.

21 Q You said you signed an affidavit supporting
22 this change of venue and basically without me reading
23 verbatim you basically said that you had read the change
24 of venue motion that you basically agreed with it and in
25 that change of venue motion it says "There's a dangerous

1 combination instigated by influential persons against the
2 Defendant."

3 Do you know of any dangerous combination
4 instigated by influential persons against the Defendant
5 to deprive him of a fair trial?

6 A Just that people, the comments people have made
7 -- have made about him being the one that did that to Mr.
8 Cole, Mr. Cole was an elderly person that couldn't have
9 harmed him.

10 Q But you don't know of any dangerous combination
11 instigated by --

12 MR. OLD: I object to that.
13 He just answered that question.

14 THE COURT: Overruled. Go
15 ahead.

16 MR. TOWNSEND: Isn't it true
17 that, Mr. Hill, that you don't know of any dangerous
18 combination that was instigated by any influential person
19 or group of influential persons that would be against the
20 Defendant?

21 THE WITNESS: I don't know.
22 I don't know of anyone that has actually threatened him
23 but the -- no.

24 Q (BY MR. TOWNSEND) Nothing that you know of?

25 A No. Not if you put it in those terms.

1 MR. TOWNSEND: Thank you.

2 I'll pass the witness, Your Honor.

3 MR. OLD: No further
4 questions.

5 THE COURT: Thank you. You
6 may step down, Mr. Hill, appreciate you being here, Mr.
7 Hill.

8 Who is next?

9 MR. OLD: A.W. Lawton.

10 THE COURT: Go ahead, please.

11

12 SUE HILL

13 was called as a witness and, having been first duly sworn
14 by the Court, testified as follows:

15

16 DIRECT EXAMINATION

17 BY MR. OLD

18

19 Q Please state your name.

20 A Mary Sue Hill.

21 Q Where do you live, Mrs. Hill?

22 A 1100 Webb, Daingerfield.

23 Q How long have you lived in Morris county?

24 A Since January 1st, 1986.

25 Q Had you ever lived here prior to that or in

1 this area?

2 A No, sir.

3 Q Have you heard a lot about Mr. Wardlow being
4 accused of having murdered Mr. Cole?

5 A I read quite a bit of it in the paper and I
6 have heard several people talking about it in the county.
7 Yes, sir.

8 Q And have people commented to you as to whether
9 or not they believed him to be guilty?

10 A I have heard several people say that they
11 thought he was.

12 Q And did they tell you what they had in mind for
13 him if he was?

14 A Yes, sir.

15 Q What did they tell you?

16 A That he needed to be put to death just like Mr.
17 Cole was.

18 Q Have you read the newspaper articles?

19 A Yes, sir.

20 Q And after reading those articles did you
21 conclude based on those articles that he had done it?

22 A They sounded like he had if I hadn't already
23 known him myself.

24 Q Do you have an opinion -- did you know Mr.
25 Cole?

1 A I did not know him personally. No, sir. But
2 I had heard a lot of people talk about him and -- but I
3 did not know him personally. No, sir.

4 Q Did he have a good reputation?

5 A Yes, sir.

6 Q People fond of him?

7 A Yes, sir. Very much so.

8 Q Okay. Do you have an opinion as to whether or
9 not that Mr. Wardlow can get a fair trial in this county?

10 A As much publicity as has been given I just
11 don't see how.

12 Q All right. Those that you have talked to --

13 A Seemed to have already formed opinions and it
14 would be kind of hard to put everything you heard out of
15 your mind.

16 MR. OLD: Pass the witness.

17 THE COURT: Mr. Townsend.

18

19 CROSS EXAMINATION

20 BY MR. TOWNSEND

21

22 Q Mrs. Hill, you are friends with the Wardlow
23 family?

24 A Yes, sir. I have known them since I have been
25 in Morris county.

1 Q You came to testify as a result of talking with
2 either Mr. or Mrs. Wardlow?

3 A Yes, sir.

4 Q So you are here basically today seeking to help
5 the Wardlow family?

6 A Yes, sir.

7 Q You are doing this sort of as a favor to them?

8 A Yes, sir.

9 MR. TOWNSEND: Pass the
10 witness.

11
12 REDIRECT EXAMINATION

13 BY MR. OLD

14
15 Q Have you made any statements that you truly did
16 not believe in your testimony?

17 A No, sir.

18 MR. OLD: Pass the witness.

19 MR. TOWNSEND: No further
20 questions.

21 THE COURT: Thank you, Mrs.
22 Hill, you and your husband have been excused which means
23 you don't have to hang around unless you just want to.

24 Who is next after Lawton, Mr. Old? Who
25 is going to follow Mr. Lawton, please?

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MR. OLD: Cathy Byrd.

THE COURT: Go ahead, please.

Mr. Lawton is in the box.

A.W. LAWTON

was called as a witness and, having been first duly sworn
by the Court, testified as follows:

DIRECT EXAMINATION

BY MR. OLD

Q Please state your name.

A My name is A.W. Lawton.

Q Where do you live, Mr. Lawton?

THE COURT: Is it "Lawton" or
"Lawson?"

THE WITNESS: "Lawton, O-N."

THE COURT: That's the way I
had it.

THE WITNESS: I live on
Highway 49 about four and a half miles north.

MR. OLD: North toward Mt.
Pleasant?

THE WITNESS: Yeah.

Q (BY MR. OLD) How long have you lived in Morris

1 county?

2 A This is my home. I lived -- I came back and
3 lived, been here living since 1967.

4 Q You were born here and raised here?

5 A Born and raised here.

6 Q Went off and came back?

7 A Yeah.

8 Q How old a man are you?

9 A 64.

10 Q Did you know Mr. Cole during his lifetime?

11 A I did.

12 Q Did you know him personally?

13 A I knowed him pretty good because being Public
14 Works Director worked for the city here for 24 years and
15 I knowed him, saw him practically everyday here in town.

16 Q You were the Public City Works Director for the
17 City of Daingerfield?

18 A I retired as City of Daingerfield Public Works
19 Director.

20 Q Was Mr. Cole pretty well-known all over Morris
21 county?

22 A As far as I know I really would say that he was
23 well-known all through Morris county.

24 Q Was he considered to be a good man?

25 A Indeed.

1 Q Did you know of your own knowledge?

2 A Indeed. I say he's a good man.

3 Q Was he a popular man?

4 A I would say so.

5 Q Do you know that Mr. Wardlow is accused of
6 having murdered Mr. Cole?

7 A I know his daddy real good but I didn't really
8 know him. I have been knowing --

9 Q Do you know Billy?

10 A I didn't really know him.

11 Q You know that he's accused of having murdered
12 Mr. Cole?

13 A Yes, sir.

14 Q Have you heard a lot of talk about that?

15 A Not lately.

16 Q Back when it happened?

17 A Early.

18 Q Back when it happened did you hear a lot of
19 talk about it?

20 A Right.

21 Q What were people -- were they expressing
22 opinions whether he did it or not?

23 A They was.

24 Q What were they saying?

25 A Well, they was all against Mr. Wardlow at the

1 time, didn't know what to call it but what has been said
2 really was against him.

3 Q They were against him?

4 A Yes, sir.

5 Q And did they express opinions as to what ought
6 to be done to him for killing Mr. Cole?

7 A Some did.

8 Q Okay. And those expressed opinions, what was
9 generally the opinion?

10 A Well, the maximum penalty.

11 Q That is the death penalty?

12 A Yes.

13 Q Have you heard anyone that commented on it that
14 did not express the opinion that he was guilty?

15 A Well, they said you don't know really exactly
16 what happened, you can't really say for sure when you
17 really don't know, you just go by hearsay.

18 Q Do you have an opinion as to whether or not Mr.
19 Wardlow can get a fair trial in this county?

20 A Well, my opinion I believe because of Mr. Cole
21 I believe it would be a little difficult.

22 Q What about Mr. Cole?

23 A Because of being well-known as he was.

24 Q Would it be a fair statement that he was loved
25 by many in this county?

1 A I believe that would be a fair statement.

2 MR. OLD: Pass the witness.

3

4 CROSS EXAMINATION

5 BY MR. TOWNSEND

6

7 Q Mr. Lawton, you are friends of the Defendant's
8 father, Jimmy Wardlow?

9 A Yes, sir.

10 Q Is Jimmy the one that asked you to come
11 testify?

12 A Yes, sir.

13 I have been knowing him for a long time.
14 He's a real good friend.

15 Q And you are basically here today to try to help
16 Jimmy, the Wardlow family?

17 A I am here to do the thing that is right. Yes.

18 MR. TOWNSEND: Okay. Pass the
19 witness.

20

21 REDIRECT EXAMINATION

22 BY MR. OLD

23

24 Q Mr. Lawton, you are a friend of Mr. Jimmy
25 Wardlow?

1 A Yes, sir.

2 Q Have you stated anything that wasn't true to
3 help Mr. Wardlow or help Mr. Wardlow's son?

4 A No, sir.

5 MR. OLD: Pass the witness.

6 MR. TOWNSEND: No further
7 questions.

8 THE COURT: Thank you, Mr.
9 Lawton. You may step down and I appreciate you being
10 here.

11 You are excused, meaning you don't have
12 to hang around unless you want to.

13 Cathy Byrd.

14 THE WITNESS: Thank you very
15 much.

16 THE COURT: Thank you, Mr.
17 Lawton.

18 Who is going to be after Ms. Byrd?

19 MR. OLD: Patsy Martin.

20 THE COURT: Go ahead.

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CATHY BYRD

was called as a witness and, having been first duly sworn
by the Court, testified as follows:

DIRECT EXAMINATION

BY MR. OLD

Q Please state your name.

A Cathy Byrd.

Q Where do you live, Ms. Byrd?

A Cason.

Q How long have you lived in Cason or Morris
county?

A All my life, 27 years.

Q What do you do for a living?

A A housewife.

Q Do you work at all?

A I did. I worked at --

THE COURT: Excuse me.

Counsel, housewives probably do a lot
more work than us fellows that don't so they generally
have their hands full, it's not as if they don't work,
just that they don't get paid.

MR. OLD: You interrupted me
before I asked her if she worked outside the home, Your

1 Honor.

2 THE COURT: I'm sorry.

3 MR. OLD: Have you in the past
4 worked outside the home?

5 THE WITNESS: I worked for a
6 couple of years at Cason store at Cason.

7 Q (BY MR. OLD) Did you work there during the
8 period of time that Mr. Cole was murdered?

9 A No. I had just quit and went to Mt. Pleasant
10 to work.

11 Q Did you come back and work at the store in
12 Cason after that?

13 A Yes.

14 Q Have you heard a lot of people talk about Mr.
15 Cole's murder?

16 A Yes.

17 Q And the fact that Mr. Wardlow is charged with
18 it?

19 A Yes.

20 Q Have people told you what they thought?

21 A Yes.

22 Q What did they say?

23 A Well, they, a lot of people said that, you
24 know, he deserved to die just like Carl Cole did.

25 Q Do they -- I mean they are already punishing

1 him and he hasn't been found guilty?

2 A Well, just people talk.

3 Q Okay. And was most of that in the Cason area
4 where you heard that?

5 A Most of it.

6 Q Did you hear it other places in Daingerfield?

7 A Sometimes.

8 Q You are Billy's first cousin, is that correct?

9 A Yes.

10 Q And people -- I mean it's well-known in the
11 Cason area, isn't it, his mother and your mother are
12 sisters?

13 A No. His mother and my father are brothers.

14 Q "Brother and sister?"

15 A Yes.

16 Q That's well-known in the Cason area?

17 A Yes.

18 Q And people would get up and make that statement
19 in your presence?

20 A Yes. But some people don't know, don't really
21 connect me with them all the time, people who don't know
22 that I belong to the Martins.

23 Q Did you know Mr. Cole?

24 A Yes, sir.

25 Q How did you know Mr. Cole?

1 A I knew him from -- I had known him all my life
2 but I really got close to him when I was working at Cason
3 store.

4 Q And when you say you have known him all of your
5 life did you know him on site all of your life?

6 A I had just seen him around and I really got to
7 talk to him a lot, though, when I was working.

8 Q Was he likeable?

9 A Yes, sir.

10 Q Was your observation of him he was a good man?

11 A Yes, sir.

12 Q Did he hang around the Cason store?

13 A Yes.

14 Q A lot of people hang around the Cason store?

15 A Yes, sir.

16 Q You all liked Mr. Cole?

17 A Yes, sir.

18 Q Was he kind of the deacon or the dean of the
19 store?

20 A Yes, sir. He always joked about "being an
21 employee."

22 Q Do you have an opinion as to whether or not
23 your cousin Billy can get a fair trial in this county?

24 A I don't think he will.

25 Q And what do you base that on?

1 A Because of talk, you know, everybody -- Mr.
2 Cole being so well-known.

3 Q And what you have heard since?

4 A Yes, sir.

5 MR. OLD: Pass the witness.

6 MR. TOWNSEND: No questions,
7 Your Honor.

8 THE COURT: You may step down,
9 ma'am. Thank you. You are excused.

10 That means you don't have to hang
11 around.

12 "Patsy Martin", who is after "Ms.
13 Martin"?

14 MR. OLD: Mr. Nash.

15

16 PATSY MARTIN

17 was called as a witness and, having been first duly sworn
18 by the Court, testified as follows:

19

20 DIRECT EXAMINATION

21 BY MR. OLD

22

23 Q Please state your name.

24 A Patsy Martin.

25 Q You live near Cason?

1 A Yes, sir.

2 Q Have you lived there a long time?

3 A Yes, sir.

4 Q How long have you lived there?

5 A All my life just about.

6 Q I believe you actually live across the line in
7 Titus county?

8 A Yes, sir.

9 Q Have you lived in Morris county in the past?

10 A Yes.

11 Q How far do you live from Morris county -- yeah
12 "Morris county"?

13 A It's kind of just across the road.

14 Q Part of your land is in Morris county?

15 A Not -- not actually but it is across the road.

16 Q The land that adjoins you across the road is?

17 A Yes, sir.

18 Q The community that you live in and you do
19 business in, is it more acquainted to Morris county,
20 Cason and Daingerfield than to Titus county?

21 A Yes.

22 Q You are Billy Wardlow's aunt, is that correct?

23 A Yes.

24 Q Do you work outside the home?

25 A No, sir.

1 Q You know that Billy is charged with having
2 murdered Mr. Cole?

3 A Yes, sir.

4 Q Have you heard a lot of comment or talk about
5 that?

6 A Yes, sir.

7 Q And what are people saying as to whether or not
8 he did it or not or whether he's guilty or not?

9 A They say he's guilty.

10 Q And have people made that comment in your
11 presence?

12 A Yes, sir.

13 Q Have people who should have known that you were
14 his aunt made that comment in your presence?

15 A Yes.

16 Q Doesn't seem to bother them to make that
17 statement to you even though they know you are a
18 relative?

19 A Doesn't seem to. No, sir.

20 Q Have they expressed to you what they think
21 ought to be done to Billy?

22 A Sometimes. Yes, sir.

23 Q What opinion have they expressed as to how he
24 ought to be dealt with?

25 A That he ought to be put in prison for life or

1 death or --

2 Q But they are already willing to sentence him
3 even though he hasn't been found guilty?

4 A No, sir. Yes.

5 Q Did you know Mr. Cole?

6 A Yes, sir.

7 Q How long have you known Mr. Cole?

8 A All my life.

9 Q Was Mr. Cole well-known in Morris county?

10 A Very well-known. Yes, sir.

11 Q Did he have a good reputation?

12 A Yes, sir.

13 Q Was he a liked or loved man?

14 A Yes, sir.

15 Q Do you have an opinion as to whether or not
16 Billy can get a fair trial in this county?

17 A Probably not.

18 Q Okay. And why is that?

19 A It's just been so well talked about so much.

20 Q Is it -- how about Mr. Cole's popularity, does
21 that effect it?

22 A I think so.

23 Q Now, you are his blood --

24 A I am his -- I am his uncle's wife.

25 Q You are his uncle's wife?

1 A Yes.

2 Q People have made the statement to you that he's
3 guilty?

4 A Yes, sir.

5 Q And they have made the statement to you he
6 ought to get life?

7 A Yes, sir.

8 Q Life or death sentence?

9 A Yes, sir.

10 Q Don't you think it takes -- I mean people know
11 your relationship with him but yet they go ahead and say
12 those things in your presence?

13 A Yes, sir.

14 MR. OLD: Pass the witness.

15 MR. TOWNSEND: No questions,

16 Your Honor.

17 THE COURT: Thank you, ma'am.

18 You may step down.

19 Mr. Nash.

20 You are excused, that means you don't
21 have to wait around unless you choose to.

22 Who will be after Mr. Nash?

23 MR. OLD: O.B. Senn.

24 THE COURT: Go ahead.

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W.S. NASH

was called as a witness and, having been first duly sworn
by the Court, testified as follows:

DIRECT EXAMINATION

BY MR. OLD

Q Please state your name.

A It's William Simpson Nash.

Q Where do you live, Mr. Nash?

A Route 1, Box 175-C, Daingerfield which is in
the Jenkins community.

Q "Jenkins", is that kind of toward Lone Star?

A Yes.

Q How long have you lived in Morris county?

A Approximately 22 years.

Q Did you know Mr. Cole during his lifetime?

A Yes. I did.

Q How well did you know him?

A I saw him at the Cason store, saw him up here
in town, just knew him when I saw him.

Q Was he a popular man in this county?

A I feel like that he was.

Q Was he well liked?

A I feel like he was.

1 Q Do you know Billy Wardlow?

2 A Yes. I know him.

3 Q Do you know Billy's parents?

4 A Yes, sir. I do.

5 Q You all are not related, are you?

6 A No. We are not.

7 Q Have you heard a lot of talk about him having
8 killed Mr. Cole?

9 A Yes. I have.

10 Q Have people expressed an opinion to you as to
11 whether or not they think he did it?

12 A I have heard people express their opinion that
13 he did it.

14 Q On numerous occasions?

15 A I would say "numerous", yes, sir.

16 Q And have they expressed their opinion as to
17 what ought to be done to him for doing that?

18 A Probably so but I didn't pay that much
19 attention to it, you know.

20 Q Anybody indicated to you he ought to get the
21 death penalty?

22 A I have heard that if he was guilty.

23 Q Where do you work?

24 A Lone Star Steel.

25 Q And have you heard -- have you heard people

1 talk about it at work?

2 A I am not sure it has been discussed, I am sure
3 but I don't work with that many people, you know, that
4 live up in this area. Most of them live in Longview or
5 Gilmer or somewhere like that.

6 Q Outside this county?

7 A Outside of the county.

8 Q Do you have an opinion as to whether or not
9 Billy can get a fair trial in this county?

10 A Do I have an opinion?

11 Q Yes. Do you have a belief?

12 A It's possible that he could.

13 Q Do you have doubt about it?

14 A All the publicity and everything I would have
15 some doubt about it.

16 Q Has there been more publicity about this than
17 other offenses or crimes?

18 A Maybe because I knew everybody involved would
19 be the only way.

20 MR. OLD: Pass the witness.

21

22 CROSS EXAMINATION

23 BY MR. TOWNSEND

24

25 Q Mr. Nash, you are friends of friends of Jimmy

1 Wardlow's?

2 A That's correct.

3 Q And as a result of talking with Jimmy Wardlow
4 that's the reason that you are here today?

5 A That's correct.

6 MR. TOWNSEND: Pass the
7 witness.

8 MR. OLD: No further
9 questions.

10 THE COURT: Thank you, sir,
11 and you may step down, appreciate you being here.

12 THE WITNESS: Thank you.

13 THE COURT: Mr. Senn.

14 Who is after Mr. Senn? Mr. Old, who
15 would be after Mr. Senn?

16 MR. OLD: Your Honor, I might
17 be through. I have got to be sure I haven't marked
18 through somebody's name.

19 THE COURT: Okay. Fine.

20 Mr. Senn, if you will just have a seat
21 over here in the witness chair, please, sir.

22 THE WITNESS: All right, sir.

23 THE COURT: Please spell your
24 last name.

25 THE WITNESS: "Senn, S-E-N-N."

O.B. SENN, JR.

was called as a witness and, having been first duly sworn
by the Court, testified as follows:

DIRECT EXAMINATION

BY MR. OLD

Q Please state your name.

A O.B. Senn, Jr.

Q Where do you work?

A I don't work.

Q Are you retired?

A Retired.

Q What are you retired from?

A Carpenter.

Q Where do you live?

A I live at Route 2, Box 187-X, Daingerfield,
Texas.

Q What community or area of Morris county is
that?

A That's about two and an eighth miles west on
Highway 11 from Daingerfield city limits.

Q That's between here and Cason?

A Yes, sir.

Q Did you know Mr. Cole during his lifetime?

1 A All my life.

2 Q Was he a well-known man in Morris county?

3 A Yes, sir.

4 Q Was he a well liked man in Morris county?

5 A As far as I know he was.

6 Q Do you know that Mr. Wardlow is accused of
7 having murdered him?

8 A Yes, sir.

9 Q Have you heard people talk about that?

10 A Oh, yes. There has been talk about it, sure
11 has.

12 Q Have you read a lot in the paper about it?

13 A I beg your pardon?

14 Q Have you read the newspaper?

15 A Oh, yes. I read the paper.

16 Q The talk that you have heard and what
17 people are saying, has it been disfavorable to Mr.
18 Wardlow?

19 A Well, pro and con.

20 Q People have expressed to you the opinion that
21 he's guilty?

22 A Yes. I have heard that.

23 Q And they feel pretty strongly about it when
24 they express that opinion?

25 A Well, some have and some just couldn't figure

1 out what possessed him to do it if he did it.

2 Q Do you have an opinion as to whether or not Mr.
3 Wardlow can get a fair trial in this county?

4 A I believe he could.

5 Q You don't think that the popularity of Mr. Cole
6 would effect a jury in this county?

7 A Well, I don't think so.

8 Q You don't think so?

9 A No, sir.

10 MR. OLD: Pass the witness.

11 MR. TOWNSEND: No questions
12 of this witness, Your Honor.

13 THE COURT: Thank you, Mr.
14 Senn. You are excused. You don't have to hang around
15 any further today, we appreciate you being here.

16 THE WITNESS: All right, sir.

17 MR. OLD: Your Honor, we rest
18 on the motion.

19 MR. TOWNSEND: The State would
20 call Bob Scaff.

21 THE COURT: Spell that last
22 name for me.

23 THE DISTRICT CLERK: "Scaff,
24 S-C-A-F-F."

25

1 (The Defendant rested its case on Motion
2 for Change of Venue.)
3

4 BOB SCAFF
5 was called as a witness and, having been first duly sworn
6 by the Court, testified as follows:
7

8 DIRECT EXAMINATION

9 BY MR. TOWNSEND
10

11 Q State your name, please.

12 A Bob Scaff.

13 Q And, Bob, how are you employed?

14 A I'm Morris County Commissioner.

15 Q And you are a commissioner of what precinct?

16 A Precinct One.

17 Q Okay. You have just been elected commissioner
18 of a new precinct I believe, what is the number for that?

19 A It will be "Precinct Four."

20 Q What is Precinct One, the old Precinct One,
21 basically what area does that encompass?

22 A That is part of the City of Daingerfield and
23 the Cason area.

24 Q Okay. What about your new precinct, what area
25 does that encompass?

1 A It will be part of the City of Daingerfield and
2 go east and north to the Rocky Branch area.

3 Q Does it actually go north of Rocky Branch?

4 A Yes.

5 Q Goes east all the way to the Cass county line
6 to Hughes Springs?

7 A Yes.

8 Q What sort of education do you have, Bob?

9 A I graduated from high school in Paul Pewitt at
10 Naples and Omaha, graduated from Southern Arkansas
11 University with a BBA.

12 Q Have you lived the majority of your life in
13 Morris county?

14 A Yes.

15 Q How long have you lived here in the
16 Daingerfield area?

17 A I have lived in Daingerfield nine years.

18 Q Prior to that time were you born and raised in
19 the Omaha area?

20 A Yes. I was born in Naples and raised in Naples
21 and Omaha up until I was twenty years old.

22 Q After that time, after getting out of college
23 I believe you worked at the Morris county bank at Naples?

24 A I worked at Morris county bank in Naples six
25 years.

1 Q And what years were those?

2 A From 1974 through 1980.

3 Q You still have relatives in the Naples-Omaha
4 area?

5 A Yes.

6 Q Does that include your mom and dad?

7 A Yes.

8 Q I guess them living up there you still spend
9 quite a bit of time in the north end of the county?

10 A Yes. I do.

11 Q As well as your commissioner's job?

12 A Yes.

13 Q For instance a few years ago when you were
14 working at the bank in Naples did you know Mr. Homer
15 Cole?

16 A Yes. I did.

17 Q And I believe Homer was Carl Cole's brother,
18 is that right?

19 A That's right.

20 Q And did Homer live there in Naples?

21 A Yes.

22 Q And during that period of time in knowing Mr.
23 Homer Cole and working at the bank of Naples and growing
24 up in this area did you know Carl Cole?

25 A No.

1 Q When did you meet Carl Cole?

2 A I didn't meet Carl Cole until I moved to
3 Daingerfield in 1985.

4 Q Sometime after that you found out that he and
5 Homer were brothers?

6 A Yes.

7 Q Based on your knowledge of people, particularly
8 in the Omaha and Naples end of the county there has been
9 publicity in this case from the Daingerfield newspaper
10 presented, do you believe that publicity or just word of
11 mouth publicity has had such a strong effect that there
12 are substantial numbers of people in the north end of the
13 county that could not be fair jurors?

14 A No. I do not believe that.

15 Q Do you believe that the Defendant in this case,
16 Billy Wardlow, could get a fair trial in Morris county?

17 A Yes.

18 Q I think you said you knew Carl, knew him to be
19 an older person, is that correct?

20 A That's correct.

21 Q How old are you, Mr. Scaff?

22 A 47.

23 Q Do most of the people that you know of that
24 know Carl Cole, would they be in the 65 and older
25 category?

1 MR. OLD: I object to the
2 question, it calls for him to speculate who knew Carl
3 Cole, those people that he knew of that knew Carl Cole.

4 THE COURT: Sustained until
5 you word it some kind of way differently.

6 MR. TOWNSEND: We are talking
7 opinions today, Your Honor, so I would ask him his
8 opinion, would that be all right?

9 THE COURT: You can put your
10 question however you want to and I will see if anybody
11 objects.

12 MR. TOWNSEND: In your
13 opinion, Mr. Scaff, are most of the people that would be
14 closely -- would have close ties, relatives,
15 relationships, friendships with Mr. Cole, would they
16 be --

17 MR. OLD: Object to the
18 question, it calls for him to speculate who had close
19 ties to Mr. Cole, "Most of the people had close ties."

20 THE COURT: Overruled.

21 Commissioner, try to base your opinion
22 as close as you can as to what you know by virtue of your
23 own experience as opposed to trying to project out to
24 unknown people if you can.

25 If you can answer it without relying on

1 just a guess, based on a guess I will let you answer, if
2 you can make that distinction the best you can.

3 Okay. Would you ask the question one
4 more time and let me --

5 MR. TOWNSEND: Basically the
6 question boils down to; is it your opinion that most of
7 the people that -- who have been close to Carl within
8 your knowledge would be in the 65 and older category?

9 THE WITNESS: In my opinion
10 the people that I know and that I know these people knew
11 Carl Cole, most of them would be over 65.

12 Q (BY MR. TOWNSEND) Mr. Scaff, you have lived
13 pretty well over the county as far as living in the south
14 end and you have lived in the north end, is that correct?

15 A That's correct.

16 Q Do you feel you have a good working knowledge
17 of the people in the county so far as do you still feel
18 that you know people well in both ends?

19 A Yes.

20 Q Do you feel like or do you feel like that there
21 would be a difference as far as knowledge of this case
22 basically from one end of the county to the other or do
23 you think it would be about the same all over?

24 A It would be different.

25 Q Mr. Scaff, I think you are familiar with the

1 newspaper, the Bee?

2 A Yes.

3 Q Is that a newspaper that many people to your
4 knowledge read in Naples and Omaha?

5 MR. OLD: I object to him
6 testifying as to whether he thinks it's read in Naples,
7 it calls for speculation.

8 MR. TOWNSEND: I will
9 withdraw.

10 MR. OLD: People read the Bee
11 or don't read the Bee, that's fine.

12 MR. TOWNSEND: I have already
13 withdrawn it.

14 THE COURT: Next question.

15 MR. TOWNSEND: I'll pass the
16 witness.

17

18

CROSS EXAMINATION

19

BY MR. OLD

20

21 Q You are a County Commissioner, how many years
22 have you been a commissioner?

23 A How many have I been County Commissioner, two,
24 two years. This is my second year, in January I will
25 have served two years.

1 Q You came in at midterm?

2 A No. We had a redistricting, I had two -- my
3 term was shortened.

4 Q You mean you got to run two years ago for a
5 four year term then you got to run for a four year term
6 again this year?

7 A That's correct.

8 Q Are you as a Commissioner in Morris county, are
9 the finances of Morris county of your concern?

10 A Yes.

11 Q And it is something that you have to answer to
12 those people who vote in this county for?

13 A That's correct.

14 Q You are aware that if the Court should grant
15 a change of venue in this and this case should be moved
16 to another county that that would create additional costs
17 to Morris county, Texas?

18 A Yes.

19 Q Have you as a Commissioner and the
20 Commissioner's Court together, done any sort of study or
21 investigation as to how much that is going to cost?

22 A No.

23 Q Mr. Cole was a well-known man in this county,
24 wasn't he?

25 A He was well-known in Cason.

1 Q He was one of the pioneers of the county,
2 wasn't he?

3 A I don't know.

4 Q You don't know?

5 A No.

6 Q Do you know Ray Cochran?

7 A Yes.

8 Q Do you know if Ray Cochran would be a person
9 for you to take a position to know who the pioneer
10 families of this county were?

11 MR. TOWNSEND: Your Honor,
12 this calls for opinion, calls for speculation.

13 THE COURT: Sustained.

14 MR. OLD: Do you know Jerry
15 Pratt, Sr.?

16 THE WITNESS: Yes. I do.

17 Q (BY MR. OLD) Would you agree that Carl Cole
18 had a lot of friends?

19 A Yes.

20 Q And those friends weren't particularly limited
21 to any geographic area, he had friends in the north part
22 of this county, didn't he?

23 A I don't know.

24 Q You don't know?

25 A No.

1 Q You are not saying he did, you are not saying
2 he didn't, you are saying you don't know?

3 A Correct.

4 MR. OLD: Pass the witness.

5 MR. TOWNSEND: No further
6 questions.

7 THE COURT: Thank you,
8 Commissioner. You may step down. You are excused.

9 You are free to stay or leave as you
10 choose.

11 Any further witnesses, Mr. Townsend?

12 MR. TOWNSEND: That's all we
13 have.

14 THE COURT: All right. The
15 evidence then is closed on the change of venue.

16 Mr. Bailiff, have we got anybody that
17 was sworn as a witness and they are out there and they
18 want to come in when they are part of the public now.

19 THE BAILIFF: I think they are
20 all gone, they was too anxious.

21 THE COURT: Okay. Mr. Old.

22 MR. OLD: Yes.

23 THE COURT: Argument?

24 MR. OLD: May we approach the
25 bench?

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THE COURT: Sure.

(Off the record hearing at the bench out of the hearing of the Court Reporter.)

THE COURT: Okay. Back on the record.

Mr. Old indicates that he wants to reserve a closing argument but doesn't necessarily need to do one now.

Mr. County Attorney?

MR. TOWNSEND: Well, as the Court knows one of the things that has been pointed out repeatedly, the amount of publicity --

THE COURT: Let me stop just a second, it might shorten everybody, the two statements under 316, "A dangerous combination", under subpart A, that motion is denied.

Now, the issue has to do with whether or not there can be a fair and impartial jury trial which is "Item One", in other words, I am not -- there's nothing to support "a combination" in this so let's, if the motion is to be granted it has to be granted on One, not on Two.

Go ahead.

1 MR. TOWNSEND: There has been,
2 it's lots of talk about publicity in the newspaper, you
3 know, we have got two local newspapers in the county.

4 We have got evidence presented that one
5 of those newspapers had some publicity, we have no
6 evidence presented that it was on TV. I think there was
7 mention of one radio station discussing it.

8 We don't know how much or whether --
9 there's no evidence that any of the newspapers outside
10 of the county that are widely circulated within the
11 county such as Longview, Texarkana, Mt. Pleasant
12 newspapers, there's no evidence that those papers
13 presented any publicity so when we are talking about
14 "publicity", all we are talking about is one little local
15 newspaper presenting publicity or presenting this stuff
16 that would largely go to this end of the county.

17 I think that we are pretty much in
18 agreement, of course, as the Court knows simply having
19 publicity in a case doesn't call for a change of venue.
20 Simply having knowledge of the victim is really not a
21 reason for change of venue, if so John F. Kennedy's
22 killer would never have been tried.

23 As for the witnesses presented, they all
24 seemed like good folks to me but they are all friends of
25 the Wardlows for the most part with the exception of

1 maybe one, they are either friends or relatives of the
2 Wardlows. I believe they were without exception from the
3 Daingerfield-Cason -- Jenkins, there was one from
4 Jenkins, the rest were all from Daingerfield or Cason.
5 If you look at your demographics, Your Honor, there's not
6 a witness from Omaha, there's not a witness from Naples,
7 there was not a witness from Lone Star, there was not a
8 witness from Hughes Springs, those four cities are all
9 in part of Morris county, that there was not one single
10 witness from any of those places.

11 I suggest to you that if the Defense in
12 this case is going to go to all the trouble to parade
13 twenty witnesses in front of you if they could have got
14 anybody to be a witness from those communities you would
15 have them here today, they had the opportunity but not
16 one witness from any of those and that's a substantial
17 part of our county, it's really a much larger part of our
18 county than the small part that the people that did
19 appear from Daingerfield and Cason represents.

20 But basically, Your Honor, it's just my
21 feeling that publicity happens in any criminal case,
22 particularly in any capital murder case you are certainly
23 going to have publicity. I don't believe there has been
24 any showing, any substantial showing by the Defendant
25 that would require change of venue to another district

1 or to just another county within the district.

2 THE COURT: Thank you.

3 MR. OLD: May I respond, Your
4 Honor?

5 THE COURT: Mr. Old.

6 MR. OLD: It has been
7 interesting to me in the witnesses in this case, I think
8 it's obvious, I don't think there's any question about
9 it, close to half of those witnesses testified that Mr.
10 Cole was their friend and they respected him and yet they
11 got on the witness stand and said a man could not get a
12 fair trial in this county for killing him.

13 Now, that is contrary to the experience
14 I have had in the practice of law in trying to get
15 changes of venue, I have been told a million times, "No,
16 Mr. so and so was my friend, I'm not going to testify."

17 But there is no rule that says the
18 witnesses have to be from the area of the county, just
19 have good knowledge of the county and of our twenty or
20 so witnesses today Mr. Ron Cowan, ex-county judge, Head
21 of the Department of Sociology at North -- Northeast
22 Texas Community College is the most credible and
23 informative source there is. He told you how Mr. Cole
24 knew this county, he told you that when he was a young
25 man running for county judge, "He took me up north" and

1 they talk about Morris county like there was a Civil War
2 going on here, the north and the south, it's not fifteen
3 miles up there, it's about a fifteen minute drive and
4 that's doing it legally.

5 Now, Mr. Cole took Mr. Cowan up into the
6 northern territory and he introduced him around and Mr.
7 Cowan told you what good he did up in the northern
8 territory as well as the southern territory. And he told
9 you that because of the way this county felt about Carl
10 Cole, one of its pioneer favorite sons and a man of 82
11 years of age being murdered that the man could not get
12 a fair trial if he was accused of having killed Mr. Cole.

13 I feel that we have produced sufficient
14 evidence, more than sufficient evidence to be entitled
15 to our change of venue and we would rest the same with
16 His Honor.

17 THE COURT: Thank you.

18 As if the Defendant's position, Mr. Old,
19 that it's throughout the entire district or just this
20 county? There is no evidence, of course, and the motion
21 under law if it's transferred it must go to a county,
22 adjacent county or at least a county within the district.

23 MR. OLD: Your Honor, when you
24 get beyond this county I have -- I'm not going to waive
25 the issue, I would be satisfied for a change of venue.

1 THE COURT: If you get the
2 relief that you ask for you can hardly complain about it.

3 MR. OLD: If I get to another
4 county I might have to file another motion but I don't
5 anticipate that, Your Honor. I don't believe it exists
6 outside this county.

7 I would urge the Court if they are going
8 to consider the motion and grant it consider Titus county
9 because of the size.

10 THE COURT: My logic is that
11 it's the only county with any substantial -- that it's
12 the biggest by population.

13 MR. OLD: It's the only county
14 that I'm aware of, I believe I am right, it can have two
15 courtrooms that can be -- where court can go on in one
16 county.

17 THE COURT: Yes. I have
18 noticed -- I don't know that there is ever a reason that
19 a judge needs to assign when he or she steps aside, I do
20 note that both of the elected judges of this county did
21 step aside.

22 Mt. Pleasant is how many miles from
23 here?

24 MR. OLD: Seventeen, eighteen
25 miles.

1 THE COURT: I know we talked
2 about it in chambers. The Court is always faced with the
3 problem if a case is transferred is that it could be
4 contributive or suggestive that the people of a community
5 somehow or another are not -- it could be interpreted as
6 being criticism of the county. I think into that it is
7 not inappropriate, however I don't have the statistical
8 abstract of the last United States census for this
9 county, it's certainly something that I can take note of
10 and I'm reasonably satisfied that the average population
11 of the county, age of this county is substantially high,
12 certainly when it's compared with a fast growing county
13 such as Dallas or Collin or Denton.

14 I don't think that it would be all that
15 burdensome if it's only relatively few miles, not talking
16 about taking a host of witnesses and putting them in a
17 hotel and so forth like you take a Tarrant county case
18 and move it up to the panhandle somewhere.

19 The Defendant has had the opportunity
20 to suggest if there was some kind of problem about this
21 case being tried anywhere but in the district outside of
22 this county that the most logical one obviously would be
23 Titus county and since you are going to use a visiting
24 judge, a visiting judge is to try this case it's only
25 fifteen miles to transfer it, to transfer it to Titus

1 county within the district.

2 Gentlemen, on the assumption that some
3 judge actually gets designated to hear this case within
4 a relatively short order -- I'm aware of why Judge Thorpe
5 had to step aside because of his family, a death in the
6 family, is this case ready to go to trial?

7 Apparently the Defendant has been in
8 jail what, a year?

9 MR. TOWNSEND: Longer than
10 that.

11 THE COURT: More than a year?

12 MR. OLD: Not -- it's not my
13 fault.

14 THE COURT: I know you haven't
15 had much time but could you give the Court some
16 suggestion about how long it would take you to get ready?

17 MR. OLD: Your Honor, if I can
18 get -- if the Court gave the date mid to late September
19 and I knew that in the next week I am confident I could
20 be ready, I would like at least --

21 THE COURT: How much?

22 MR. OLD: -- at least four
23 weeks before jury selection.

24 MR. TOWNSEND: That's as much
25 notice as I need.

1 MR. OLD: I don't want it to
2 rock along and not have a setting and hear it the week
3 before it's set.

4 MR. TOWNSEND: I would hope
5 we would be able to do something by then.

6 MR. OLD: When I took this
7 assignment I represented that I could do my work and get
8 ready.

9 THE COURT: I have absolute
10 confidence in both of the lawyers in the case being, to
11 be able to take care of your half of the case without any
12 problem.

13 Would there be, so far as anything new,
14 any particular business between the 19th of September
15 and the 27th?

16 Now, I'm speaking real fast here knowing
17 I don't know who the judge is going to be but if there
18 are two courtrooms so far as you know I would assume that
19 given the age of the case and the cooperation of both
20 judges that would it -- in Titus county, is the usual
21 time for them to have jury panels?

22 MR. OLD: There's a statute
23 on it, in this case we have to have it in our hands ten
24 business days before selection in a capital case, there's
25 a rule on it.

1 THE COURT: I understand. But
2 I also think this case needs to go forward, whatever its
3 outcome is going to be it needs to be tried.

4 Maybe the best thing to do is suggest
5 the 26th.

6 What I'm going to do is just set it for
7 Monday, the 26th of September, obviously that whoever is
8 assigned permanently to the case may have a different
9 date but at least we can start getting somewhere to go
10 to trial.

11 Now, Mr. Old, I note that the statute
12 provides that the Clerk of the Court move the records and
13 so forth over.

14 As a practical matter is there any
15 particular -- given testimony that the Defendant's family
16 is here is there any reason to transfer the Defendant at
17 any time early?

18 MR. OLD: You mean from the
19 county?

20 THE COURT: Yes. I would
21 assume that he would prefer to be closer to where his
22 people are and this county not bear the burden of per
23 diem if Titus county would choose to charge a per diem.

24 MR. OLD: He would be happy
25 staying here and prefer staying here.

1 The only thing I would like when trial
2 starts that --

3 THE COURT: Once it begins I
4 would think there is a lot of reasons for the ability to
5 try the case at that time or sometime shortly before an
6 actual trial starts to physically transfer the Defendant.
7 In the meantime at the Defendant's request he's going to
8 be left here.

9 Anything else at all that we can deal
10 with, gentlemen?

11 MR. TOWNSEND: No.

12 THE COURT: All right. We
13 will stand in recess in this matter until -- is 9:00 the
14 usual starting time in Titus county?

15 MR. OLD: That's the usual
16 starting time in Titus county.

17 THE COURT: Mr. Clerk, if you
18 would be kind enough to oblige me by talking with your
19 counterpart Monday and see if there's any logistical
20 problem and see if they can gear up to do a jury list and
21 summons for that. Don't send them out yet but just get
22 the work started so that it could be done.

23 We don't need any further record.

24

25

1 STATE OF TEXAS §
2 §
3 COUNTY OF TITUS §

4 I, Lloyd E. Billups, CSR #149 and
5 Official Court Reporter in and for the 76th Judicial
6 District, State of Texas, do hereby certify that the
7 above and foregoing contains a true and correct
8 transcription of the proceedings in the above-styled and
9 numbered causes, all of which occurred in open court or
10 in chambers on August 12, 1994 and were reported by me.

11 I further certify that this
12 transcription of the record of the proceedings truly and
13 correctly reflects the exhibits, if any, offered by the
14 respective parties.

15 WITNESS MY HAND this 29th day of
16 September, 1995.

17 

18 _____
19 LLOYD E. BILLUPS, CSR #149 & OFFICIAL COURT REPORTER
20 76TH JUDICIAL DISTRICT, STATE OF TEXAS
21
22
23
24
25

1 Certification Number of Reporter: 149
2 Expiration Date of Certification: 12/31/96
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1 The within and foregoing pages,
2 including this page, having been examined by the Court
3 are found to be a true and correct transcription of the
4 statement of facts and other proceedings, all of which
5 occurred in open court or in chambers and were reported
6 by the Official Court Reporter.

7 SIGNED this _____ day of
8 _____, A.D., 1995.

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13 _____
PAUL BANNER
14 Judge by Judicial Assignment
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1 We, the undersigned attorneys of record
2 for the respective parties, do hereby agree that the
3 foregoing pages constitute a true and correct
4 transcription of the statement of facts, and other
5 proceedings in the above-styled and numbered cause, all
6 of which occurred in open court or in chambers and were
7 reported by the Official Court Reporter.

8 SIGNED this day of
9 _____, A.D., 1995.

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13 _____
14 Attorney for the State

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16 _____
17 Attorney for the Defendant
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